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rcaddick
By _____, Deputy
Case Number:
34-2022-00314360

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SACRAMENTO**

13
14 JOHN WALDREP, *in his capacity as Private*
15 *Attorney General Representative,*

16 Plaintiff,

17 v.

18 CAMBLY INC.,

19 Defendant
20
21

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEY
GENERAL ACT OF 2004 ("PAGA")**

**I. PRIVATE ATTORNEY GENERAL ACT
(PAGA) CLAIM FOR CIVIL PENALTIES
(CAL. LAB. CODE §2698 *et seq.*)**

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BY FAX

1 **I. INTRODUCTION**

2 1. This case is brought on behalf of the state of California and other similarly
3 situated aggrieved individuals who have worked as teachers for Cambly Inc. ("Cambly") in the
4 state of California. Cambly is an online tutoring service, which engages teachers across the state
5 of California to perform online English as a Second Language ("ESL") classes to students
6 around the world. Cambly is incorporated in Delaware with its headquarters located in San
7 Francisco, California.
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9 2. As described further below, Cambly has misclassified its teachers including
10 Plaintiff Jon Waldrep. Because of teachers' misclassification as independent contractors,
11 Cambly has violated numerous provisions of the California Labor Code. Cambly has willfully
12 misclassified teachers as independent contractors in violation of Cal. Lab. Code § 226.8; has
13 failed reimburse tutors for all reasonably necessary expenditures incurred in the discharge of
14 their duties, including but not limited to the cost of their computer, webcam, and internet
15 connection; has failed to ensure that its tutors receive the applicable state minimum wage for all
16 hours worked insofar as Cambly pays 17 cents per minute for its classes, which amounts to a
17 sub-minimum wage of \$10.20 per hour, and it does not compensate tutors for time spent
18 preparing lessons, in violation of Cal. Lab. Code §§ 1197 and 1194; has failed to pay teachers the
19 appropriate overtime premium for all overtime hours worked beyond forty per week or eight
20 hours per day in violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554; has failed to afford
21 teachers meal and rest breaks when tutors teach back to back classes, in violation of §§ 226.7
22 and 512; has failed to provide accurate, itemized wage statements, including failing to provide
23 information about hours worked during each weekly pay period in violation of Cal. Lab. Code §
24 226; and has required teachers to sign illegal contracts in violation of Cal. Lab. Code § 432.5.
25 Plaintiff brings his claims pursuant to the Private Attorney General Act ("PAGA"), Cal. Lab.
26 Code § 2699, *et seq.*, on behalf of the state of California and all other similarly situated
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1 aggrieved employees who have been misclassified by Cambly in California since November 9,
2 2020.

3 **II. PARTIES**

4 3. Plaintiff Jon Waldrep is an adult resident of Sacramento, California, where he has
5 worked as an online ESL teacher for Cambly.

6 4. Defendant Cambly, Inc. ("Cambly") is a corporation incorporated in Delaware
7 with its headquarters in San Francisco, California.

8 **III. JURISDICTION**

9 5. This Court has jurisdiction over Plaintiff's PAGA claim pursuant to California
10 Code of Civil Procedure § 410.10.

11 6. The monetary relief which Plaintiff seeks is in excess of the jurisdictional
12 minimum required by this Court and will be established according to proof at trial.

13 7. Venue is proper in this Court pursuant to Code of Civ. P. §§ 395 and 395.5
14 because Plaintiff Jon Waldrep is a resident of Sacramento County in California. Furthermore,
15 Defendant Cambly engages in business activities in and throughout the State of California,
16 including in Sacramento County.

17 **IV. STATEMENT OF FACTS**

18 8. Cambly is an online English as a Second Language ("ESL") tutoring company
19 incorporated in Delaware, with offices (and teachers) located in California.

20 9. Cambly employs teachers throughout California to perform online ESL sessions
21 with students in numerous countries, which are taught subject to Cambly's strict standards, as set
22 forth below.

23 10. Plaintiff Jon Waldrep has taught for Cambly since approximately March 2020.

24 11. Cambly classifies its teachers like Mr. Waldrep as "independent contractors," but
25 under California law they should be classified as employees.
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12. Teachers provide a service in the usual course of Cambly's business because Cambly is an online education service that provides ESL classes and practice sessions to its customers, and teachers such as Mr. Waldrep perform that education service. Cambly holds itself out to be an education service, and it generates its revenue primarily from customers paying for the very classes and practice sessions that its teachers perform. Without teachers to carry out these education services, Cambly would not exist.

13. Cambly teachers do not engage in business distinct and independent from Cambly's business and instead form an integrated part of Cambly's business model. Moreover, teachers are prohibited from contacting students outside Cambly's messaging function or arranging to provide teaching services to students outside of Cambly's system. When teaching through the Cambly platform, they wear the "hat" of Cambly.

14. Cambly also requires its teachers to abide by a litany of policies and rules designed to control the teachers' work performance. Cambly regularly exercises control over teachers' work.

15. Cambly determines the length of teachers' student sessions (which are provided in 15-, 30-, or 60-minute intervals).

16. Cambly determines teachers' pay. For example, Cambly pays teachers on a per minute rate that it determines in its sole discretion. Teachers cannot negotiate the amount that they will be paid and are instead paid according to Cambly's formula.

17. Cambly records every online class taught and manages complaints from their customers by reviewing the recording, deciding whether the class was completed satisfactorily, and notifying the teacher accordingly.

18. Cambly requires that teachers abide by its standards, including avoiding certain topics of conversation, maintaining a neat background which is free of noise and “maintain[ing]

1 a well-groomed and professional appearance while working with students”, with no “sleeveless
2 attire, exposed shoulders, exposed cleavage, [and] sunglasses” permitted.

3 19. Cambly provides online course materials for tutors to use in their teaching.

4 20. Cambly tracks tutors’ ratings (out of 5) and penalizes tutors with low ratings and
5 tutors who cancel classes during priority hours by freezing their ability to schedule further
6 priority hours.

7 21. Cambly does not compensate teachers for time preparing for classes (including
8 creating lesson plans and materials) or for time spent scheduling classes, which is time
9 consuming because Cambly’s system requires each class to be individually scheduled using its
10 online booking system.

11 22. Cambly tests every teacher’s computer equipment before they are able to begin
12 teaching online sessions, but it does not compensate teachers for necessary business expenses
13 such as the cost of the required internet connection and computer with a webcam (as teachers are
14 prohibited from utilizing tablets or smartphones to conduct online sessions).

15 23. Cambly does not compensate teachers if a student cancels a class on short notice,
16 and if a student fails to show up for a class, teachers are required to wait for ten minutes and are
17 compensated only for those ten minutes (at a rate of 17 cents/minute), not the balance of the
18 missed teaching session.

19 24. Cambly sometimes requires that teachers work straight through multiple lessons,
20 without breaks, even if lessons are scheduled back to back. Teachers may be disciplined, for
21 example, for taking water breaks or bathroom breaks during a lesson.

22 25. Cambly has violated Cal. Lab. Code § 2802, § 226.7, § 226.8, § 1197, § 1194, §
23 1198, § 510, § 554, § 512, § 432.5 by misclassifying its teachers as independent contractors;
24 failing to reimburse teachers for all reasonably necessary expenditures incurred in the discharge
25 of their duties, including but not limited to the cost of their computer, webcam and internet
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1 connection; failing to ensure that its teachers receive the applicable state minimum wage for all
2 hours insofar as Cambly pays 17 cents per minute for its classes, which amounts to a sub-
3 minimum wage of \$10.20 per hour, and failing to compensate tutors for time spent preparing
4 lessons; failing to pay the appropriate overtime premium for all hours worked beyond forty per
5 week or eight per day; failing to afford its tutors meal and rest breaks when tutors teach back to
6 back classes; failing to provide accurate, itemized wage statements, including failing to provide
7 information about hours worked during each weekly pay period; and requiring teachers to sign
8 illegal contracts.
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10 26. As the California Supreme Court's decision in Dynamex Operations W. v.
11 Superior Court, (2018) 4 Cal. 5th 903, reh'g denied (June 20, 2018) and Assembly Bill 5
12 (codified as Cal. Lab. Code § 2750.3) (subsequently repealed and replaced by A.B. 2257,
13 codified as Cal. Lab. Code § 2775), both make clear, Cambly teachers should be classified as
14 employees, rather than independent contractors, for the purposes of the Labor Code. Under the
15 "ABC" test adopted in Dynamex and codified in AB5, in order to justify classifying its teachers
16 as non-employees, Cambly would have to prove its teachers perform services outside their usual
17 course of business, which it cannot do here. Likewise, Cambly cannot satisfy its burden to prove
18 that teachers have been customarily engaged in an independently established trade, occupation,
19 or business of the same nature as the work they performed for Defendant. Additionally, Cambly
20 cannot satisfy their burden to demonstrate that teachers have been free from Cambly's control
21 and direction, both under that contract and in fact.

22 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 27. Plaintiff alleges that Cambly violated PAGA by willfully misclassifying its teachers as
24 independent contractors in violation of Cal. Lab. Code § 226.8; by failing to reimburse teachers
25 for all reasonably necessary expenditures incurred in the discharge of their duties, including but
26 not limited to the cost of their computer, webcam, and internet connection in violation of Code §
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1 2802; failing to ensure that its teachers receive the applicable state minimum wage for all hours
2 worked insofar as Cambly pays 17 cents per minute for its classes which is the sub-minimum
3 wage rate of \$10.20 per hour, and it does not compensate tutors for time preparing lessons in
4 violation of Cal. Lab. Code §§ 1197 and 1194; failing to pay teachers the appropriate overtime
5 premium for all overtime hours worked beyond forty per week or eight hours per day in violation
6 of Cal. Lab. Code §§ 1194, 1198, 510, and 554; failing to afford teachers meal and rest breaks
7 when teaching back to back classes in violation of §§ 226.7 and 512; failing to provide accurate,
8 itemized wage statements, including failing provide information about hours worked during each
9 weekly pay period in violation of Cal. Lab. Code § 226; and requiring teachers to sign illegal
10 contracts in violation of Cal. Lab. Code § 432.5.

12 28. On November 9, 2021, Plaintiff gave written notice of Cambly's violations of the
13 California Labor Code as alleged in this complaint to the Labor and Workforce Development
14 Agency ("LWDA") via online filing and to Defendant Cambly's general counsel via certified
15 mail.

16 29. It has been more than 65 days since the LWDA was notified of the Labor Code
17 violations asserted in this Complaint, and the LWDA has not provided any notice that it will
18 investigate the alleged violations. See Cal. Lab. Code§ 2699.3(a)(2)(A).

19
20 **COUNT I**
21 **Penalties Pursuant to Labor Code Private Attorneys General Act of 2004**
22 **Violation of Cal. Lab. Code § 2698, et seq.**

23 30. Plaintiff realleges and incorporates by reference the allegations in the preceding
24 paragraphs as if fully alleged herein. Plaintiff is an aggrieved employee as defined by Cal. Lab.
25 Code § 2699(c) as he was employed by Cambly during the applicable statutory period and
26 suffered injury as a result of Cambly's Labor Code violations. Accordingly, Plaintiff seeks to
27 recover on behalf of the State of California, as well as himself and all other current and former

1 aggrieved employees of Cambly who have worked in California, the civil penalties provided by
2 PAGA, plus reasonable attorney's fees and costs.

3 31. Cambly teachers are entitled to penalties for Cambly's violations of Cal. Lab. §§
4 2802, 1194, 1197, 1198, 432.5, 510, 512, 554, 226(a), 226.7, and 226.8, as set forth by Cal. Lab.
5 Code § 2699(f) and described further below. Plaintiff seeks civil penalties pursuant to PAGA for
6 (1) failure to reimburse teachers for all necessary expenditures incurred in performing their
7 duties, including but not limited to the cost of their computers, webcams and internet connection
8 in violation of Cal. Lab. Code § 2802; and (2) failure to assure that all teachers received the
9 appropriate overtime premium for all overtime hours worked beyond forty per week or eight
10 hours per day in violation of Cal. Lab. Code §§ 1194, 1198, 510, and 554; (3) willfully
11 misclassifying teachers as independent contractors in violation of Cal. Lab. Code § 226.8; (4)
12 failure to ensure that its tutors receive the applicable state minimum wage for all hours worked
13 insofar as Cambly pays 17 cents per minute for its classes, which amounts to a sub-minimum
14 wage of \$10.20 per hour, and failure to compensate tutors for time spent preparing lessons, in
15 violation of Cal. Lab. Code §§ 1197 and 1194; (5) failure to afford teachers meal and rest breaks
16 when tutors teach back to back classes, in violation of §§ 226.7 and 512; (6) failure to provide
17 accurate, itemized wage statements, including failing to provide information about hours worked
18 during each weekly pay period in violation of Cal. Lab. Code § 226; and (7) requiring teachers to
19 sign illegal contracts in violation of Cal. Lab. Code § 432.5. Plaintiff brings his claims pursuant
20 to the Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2699, *et seq.*, on behalf of the
21 state of California and all other similarly situated

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23 32. Cal. Lab. Code § 2699(f) provides for civil penalties for violation of all Labor
24 Code provisions for which no civil penalty is specifically provided. There is no specified civil
25 penalty for violations of Cal. Lab. Code §§ 2802 and 432.5. With respect to overtime violations
26 under Labor Code §§ 510, the statute imposes a civil penalty in addition to any other penalty
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provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. With respect to violations of Labor Code § 226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code § 226(a). With respect to violations of Labor Code § 1174, the statute imposes a civil penalty of five hundred dollars (\$500). With respect to violations of Labor Code § 226.8, Labor Code § 226.8(b) imposes a civil penalty of now less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation. With respect to the minimum wage violations under Cal. Lab. Code §§ 1197 and 1194, § 1197.1 imposes a civil penalty in addition to any other penalty provided by law of one hundred (\$100) for each underpaid employee for each pay period for which the employee is underpaid in addition to an amount sufficient to recover underpaid wages and liquidated damages, and, for each subsequent violation of Labor Code §§ 1197 and 1194, two hundred and fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid in addition to an amount sufficient to recover unpaid wages and liquidated damages. With respect to violations of §§ 512, 226.7 (meal and rest breaks), Cal. Labor Code § 558 imposes a penalty of fifty dollars (\$50) per aggrieved employee per pay period.

33. Plaintiff complied with the notice requirement of Cal. Lab. Code §2699.3 and served a written notice to the California Labor & Workforce Development Agency ("LWDA") through its website's online filing portal, and on Defendant Cambly via Certified Mail, return receipt requested, on November 9, 2021. It has been more than 65 days since the LWDA was

1 notified of the Labor Code violations asserted in this Complaint, and the LWDA has not
2 provided any notice that it will or will not investigate the alleged violations.
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4 WHEREFORE, Plaintiff requests that this Court enter the following relief:
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- 6 a. Declare and find that the Defendant violated Cal. Lab. Code §§ 2802, 1194, 1197,
7 1198, 432.5, 510, 512, 554, 226(a), 226.7, 226.8;
8 b. Enter Judgment in Plaintiff's favor on his PAGA claim pursuant to Cal. Lab. Code
9 §2699(c);
10 c. Award penalties in an amount according to proof;
11 d. Award pre- and post-judgment interest;
12 e. Award reasonable attorneys' fees, costs, and expenses;
13 f. Public injunctive relief in the form of an order requiring Defendant to comply with
14 the California Labor Code; and
15 g. Any other relief to which the Plaintiff may be entitled.
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17 Respectfully submitted,

18 JON WALDREP, in his capacity as Private
19 Attorney General Representative,

20 By her attorneys,

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