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11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**  
13

14 **OCTAVIA T. OCHOA**, individually and on  
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 **IHEARTMEDIA + ENTERTAINMENT,**  
19 **INC.**, a Nevada Corporation,

20 Defendant.  
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CASE NO. 22CV005286

LABOR CODE PRIVATE ATTORNEYS  
GENERAL ACT REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES PURSUANT TO LABOR CODE  
PRIVATE ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE § 2698 *ET SEQ.***

1 Plaintiff Octavia Tabitha Ochoa (“Plaintiff”), as a representative of the State of California pursuing  
2 claims for civil penalties for violations of the Labor Code against herself and other aggrieved employees,  
3 complains and alleges the following:

#### 4 **INTRODUCTION**

5 1. This is a representative action under the Private Attorneys General Act of 2004, codified  
6 at California Labor Code (“Labor Code”) §§ 2698 *et seq.* (“PAGA”) for civil penalties, reasonable  
7 attorneys’ fees, and costs on behalf of Plaintiff and all other similarly situated individuals currently and  
8 formerly employed in California by iHeartMedia + Entertainment, Inc. (“iHeart” or “Defendant”) as  
9 Account Executives or in a similar capacity (“AE Aggrieved Employees”) from May 5, 2020 through to  
10 the trial date (“PAGA Period”) for violations of Labor Code §§ 226(a), 226.7, 246, 432.5, 510, 1174(d),  
11 1174.5, 1194, 1197, 2802, and 201-202.

12 2. This is also a representative action under PAGA for civil penalties, reasonable attorneys’  
13 fees, and costs on behalf of Plaintiff and all other individuals employed by Defendant in California during  
14 the PAGA Period for its failure to reimburse business expenses in violation of Labor Code § 2802  
15 (“Expense Reimbursement Aggrieved Employees or “ER Aggrieved Employees”).

#### 16 **PARTIES**

17 3. Plaintiff is a resident of Bakersfield, California and was employed by iHeart as an Account  
18 Executive at its Bakersfield location from approximately March 2019 until September 2021. During her  
19 employment, Plaintiff was subject to Defendant’s unlawful conduct described herein.

20 4. Defendant iHeartMedia + Entertainment, Inc. is a global media and entertainment  
21 company incorporated in Nevada, with its principal place of business located at 20880 Stone Oak  
22 Parkway, San Antonio, Texas 78258.

#### 23 **JURISDICTION**

24 5. This Court has jurisdiction over Plaintiff’s PAGA claim pursuant to California Labor Code  
25 § 2699(a).

26 6. This Court has jurisdiction over Plaintiff’s claim for reasonable attorneys’ fees and costs  
27 pursuant to California Labor Code § 2699(g).

28 7. On November 5, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the  
LWDA (via its website) and to Defendant (via certified mail). On December 3, 2021, Plaintiff provide  
an Amended PAGA Notice to LWDA and to Defendant. The LWDA has not provided notice to Plaintiff  
regarding its intention to investigate or not investigate Plaintiff’s claims.

1 **VENUE**

2 8. Venue is proper in the County of Alameda pursuant to California Code of Civil Procedure  
3 §§ 395(a) and 395.5. Defendant has not designated a principal place of business anywhere in California.  
4 Venue is therefore proper in any county, including County of Alameda. The unlawful acts alleged herein  
5 have a direct effect on members of the Classes within the State of California and within Alameda County.

6 **FACTUAL ALLEGATIONS SUPPORTING CLAIMS ON BEHALF OF AE AGGRIEVED**

7 **EMPLOYEES**

8 9. iHeart operates as a global multimedia company specializing in radio, digital, mobile,  
9 social, live events and on demand entertainment. The company owns and operates radio stations and also  
10 manages outdoor and indoor events. iHeart employs account executives who sell media, entertainment,  
11 and advertising products and services to customers.

12 ***A. Defendant Misclassified Plaintiff and AE Aggrieved Employees as Outside Salespersons***

13 10. During the PAGA Period, Defendant maintained a policy and/or practice of classifying  
14 Plaintiff and AE Aggrieved Employees as outside sales representatives. However, beginning on or  
15 approximately March 18, 2020, following Governor Newsom's stay-at-home order, Defendant instituted  
16 policies and/or practices of requiring and/or expecting Plaintiff and AE Aggrieved Employees to work  
17 almost exclusively from their own home offices, i.e. the employer's place of business. As a result, Plaintiff  
18 and AE Aggrieved Employees regularly spent more than half of their working time at the Defendant's  
19 place of business and, as such, did not meet the outside salesperson exemption set out in Wage Order No.  
20 4, § 2(M).

21 11. Therefore, Plaintiff and AE Aggrieved Employees were entitled to the protections of the  
22 California minimum wage laws, including the right to paid minimum wage, off-duty rest breaks, accurate  
23 itemized wage statements, and, depending on their earnings, to overtime pay.

24 **Minimum Wage and Overtime Violations During the Period When AE Aggrieved Employees**  
25 **Were Paid on Commission Only**

26 12. During some parts of the PAGA Period, Plaintiff and AE Aggrieved Employees received  
27 each month a draw against future commissions. Once Plaintiff and AE Aggrieved Employees earned  
28 commissions, their draw from prior pay periods was subject to repayment. This recovery of draw  
payments by Defendant reduced Plaintiff and AE Aggrieved Employees' pay below the minimum wage  
during some pay periods. As a result, Defendant failed to pay during those pay periods Plaintiff and AE  
Aggrieved Employees at least minimum wage for all hours worked, in violation of Labor Code §§ 1194,  
1197.

1           13.     Additionally, when paid on commission only, Plaintiff and AE Aggrieved Employees' pay  
2 sometimes was below one and one-half times the minimum wage. During those times, Defendant was  
3 also required to pay overtime wages for all hours worked over 8 in a day and/or over 40 in a week. Plaintiff  
4 and AE Aggrieved Employees routinely worked over 8 hours in a day and/or over 40 hours in a week, yet  
5 Defendant did not pay them overtime, in violation of Labor Code § 510.

6           Overtime Violations During the Period When AE Aggrieved Employees Were Paid a Salary and  
7           Commission

8           14.     As stated above, Plaintiff and AE Aggrieved Employees did not qualify for the outside  
9 salesperson exemption during some parts of the PAGA Period because they worked more than half of  
10 their time from Defendant's office (i.e. their homes). During some part of the PAGA Period, Plaintiff and  
11 AE Aggrieved Employees were also paid a salary and commissions, but less than half of their  
12 compensation was earned from commissions and/or their compensation was below one and one half of  
13 minimum wage.

14           15.     As a result, they were entitled to overtime pay. However, while Plaintiff and AE Aggrieved  
15 Employees routinely worked over 8 hours in a day and/or over 40 hours in a workweek, Defendant did  
16 not pay them overtime, as required pursuant to Labor Code §§ 1194 and 510.

17           ***B. Defendant Failed to Authorize and Permit Paid Rest Breaks***

18           16.     As discussed above, during some part of the PAGA Period, Defendant paid Plaintiff and  
19 AE Aggrieved Employees on a commission only basis. Moreover, as stated above, Plaintiff and AE  
20 Aggrieved Employees spent more than half of their working time at Defendant's place of business (i.e.  
21 their home offices), and therefore could not be properly classified as outside sales representatives. As  
22 Plaintiff and AE Aggrieved Employees did not fall within the outside salesperson exemption and were  
23 paid on commission only basis during a part of the PAGA Period, they were entitled to be paid hourly  
24 and separately for their rest breaks. This is so because an employer is required to compensate employees  
25 for all hours worked, including nonproductive time, and a commission agreement that advances a draw  
26 against future earned commissions is analytically indistinguishable from a piece-rate compensation plan,  
27 in that both plans do not directly account for rest periods.

28           17.     However, Defendant did not pay AE Aggrieved Employees separately for their rest breaks,  
as required pursuant to Labor Code § 226.7.

***C. Defendant Failed to Pay All Compensation Owed to AE Aggrieved Employees Upon Discharge***

          18.     Plaintiff's employment with Defendant ended in approximately the end of September  
2021. During the PAGA Period, as a consequence of Defendant's failure to pay minimum wage for all

1 hours worked, including rest breaks, and failing to pay overtime wages, Plaintiff and formerly employed  
2 AE Aggrieved Employees did not receive all compensation due to them upon separation from employment  
3 as required under Labor Code §§ 201-202.

4 ***D. Defendant Failed to Issue Accurate Itemized Wage Statements to AE Aggrieved Employees***

5 19. As discussed above, Defendant classified Plaintiff and AE Aggrieved Employees as  
6 outside salespersons during the entire PAGA Period, despite the fact that during some part of the PAGA  
7 Period, Plaintiff and AE Aggrieved Employees spent more than 50% of their working time working from  
8 Defendant's place of business (home offices). As a result, Defendant did not require Plaintiff and AE  
9 Aggrieved Employees to track their working time, and did not list the total hours worked by Plaintiff and  
10 AE Aggrieved Employees on their wage statements, nor their time spent on rest breaks and wages earned  
11 for rest breaks.

12 20. As a result of Defendant's failure to track AE Aggrieved Employees' hours worked and,  
13 separately, as a result of failing to pay minimum wage, rest break time, and overtime wages, Defendant  
14 failed to furnish them with wage statements containing gross and net wages earned, total hours worked,  
15 all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked  
16 at each hourly rate by the employee in violation of Labor Code § 226(a)(1), (a)(2), (a)(5), (a)(9).

17 ***E. Defendant Failed to Maintain Accurate Payroll Records for AE Aggrieved Employees***

18 21. Under Labor Code § 1174(d), Defendant was required to maintain accurate payroll records  
19 for Plaintiff and AE Aggrieved Employees. As discussed above, Defendant failed to maintain records of,  
20 among other things, the hours worked and applicable rates of pay for rest breaks, in violation of Labor  
21 Code § 1174(d).

22 ***F. Defendant Failed to Provide Paid Sick Leave***

23 22. Under the Labor Code § 246(l), "an employer shall calculate paid sick leave using any of  
24 the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same  
25 manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether  
26 or not the employee actually works overtime in that workweek; (2) Paid sick time for nonexempt  
27 employees shall be calculated by dividing the employee's total wages, not including overtime premium  
28 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

29 23. During the PAGA Period, AE Aggrieved Employees were non-exempt employees because  
30 they did not meet the "outside salespersons" exemption defined in Wage Order No. 4-2001, § 2(M). As a  
31 result, Defendant was required to calculate their paid sick time using one of the methods described in  
32 Labor Code § 246(l). However, Defendant failed to do so, in violation of Labor Code § 246(l).

1           ***G. Defendant Failed to Reimburse Necessary Business Expenses***

2           24. Throughout the PAGA Period, Defendant maintained a policy of requiring Plaintiff and  
3 AE Aggrieved Employees to have a car at his/ her disposal at all times during business hours for their  
4 work-related use and to maintain auto liability insurance and property damage insurance on any car used  
5 by the employee in connection with his/her work. This policy applied during the time when Plaintiff and  
6 AE Aggrieved Employees did not drive their cars during the pandemic related shutdowns.

7           25. Under Labor Code § 2802, an employer must reimburse its employees for reasonably  
8 incurred business expenses that it knows or has reason to know that its employees are incurring expenses.  
9 Because Defendant maintained a policy of requiring Plaintiff and AE Aggrieved Employees to maintain  
10 automobiles and auto insurance throughout the PAGA Period, Defendant knew or should have known  
11 that they incurred expenses, but failed to reimburse them for a reasonable portion of their car insurance  
12 expenses.

13           26. Additionally, when Plaintiff and AE Aggrieved Employees began selling out in the field  
14 again and were using their cars in order to carry out their job duties, Defendant was required to reimburse  
15 them for their mileage and insurance expenses. However, Defendant continued to not reimburse them for  
16 any of their auto-related expenses, including insurance expenses, in violation of Labor Code § 2802.

17           ***H. Defendant Violated Labor Code § 432.5***

18           27. Labor Code § 432.5 provides: “No employer, ... shall require any employee or applicant  
19 for employment to agree, in writing, to any term or condition which is known by such employer, or agent,  
20 manager, superintendent, or officer thereof to be prohibited by law.”

21           28. Business & Professions Code § 16660 provides “Except as provided in this chapter, every  
22 contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any  
23 kind is to that extent void.”

24           29. Defendant requires AE Aggrieved Employees, as a condition of their employment, to agree  
25 to its non-interference with company employees and on-air talent. The relevant clause provides as follows:

26           To further preserve Company’s Confidential Information, goodwill and legitimate business  
27 interested, during employment and for six (6) months after employment ends (the ‘Non-  
28 Interference Period’), Employee will not, directly or indirectly, solicit any employee or on-air  
talent to cease providing service to Company.

          30. Defendant knew that its non-interference clause is prohibited by law yet required AE  
Aggrieved Employees, as a condition of their employment, to agree to this clause. Defendant therefore  
violated Labor Code § 432.5.



1           39.     During the PAGA Period, Defendant failed to pay at least minimum wage for all hours  
2 worked in violation of Labor Code §§ 1194, 1197. AE Aggrieved Employees are entitled to one hundred  
3 dollars (\$100) for each initial violation Labor Code § 1194, 1197, and two hundred dollars (\$200) for  
4 each subsequent violation, pursuant to Labor Code § 2699(f)(2).

5           40.     During the PAGA Period, Defendant failed to authorize and permit paid off-duty rest  
6 breaks in violation of Labor Code § 226.7. AE Aggrieved Employees are entitled to one hundred dollars  
7 (\$100) for each initial violation Labor Code § 226.7, and two hundred dollars (\$200) for each subsequent  
8 violation, pursuant to Labor Code § 2699(f)(2).

9           41.     During the PAGA Period, Defendant failed to pay AE Aggrieved Employees all wages due  
10 to them at the time of discharge from employment, in violation of Labor Code §§ 201-202. AE Aggrieved  
11 Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code §§ 201-202,  
12 and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

13           42.     During the PAGA Period, Defendant failed to maintain accurate payroll records for  
14 Plaintiff and AE Aggrieved Employees, in violation of Labor Code § 1174(d). AE Aggrieved Employees  
15 are entitled to five hundred dollars (\$500) for each violation of Labor Code § 1174(d) pursuant to Labor  
16 Code § 1174.5.

17           43.     During the PAGA Period, Defendant failed to reimburse Plaintiff and AE Aggrieved  
18 Employees for necessarily incurred business expenses, in violation of Labor Code § 2802. AE Aggrieved  
19 Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802, and  
20 two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

21           44.     During the PAGA Period, Defendant failed to calculate AE Aggrieved Employees' paid  
22 sick time using one of the methods described in Labor Code § 246(l). AE Aggrieved Employees are  
23 entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 246(l), and two hundred  
24 dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

25           45.     During the PAGA Period, Defendant required AE Aggrieved Employees to agree, in  
26 writing to a term or condition that it knew was prohibited by law, in violation of Labor Code § 432.5. AE  
27 Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code  
28 § 432.5, and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code §  
2699(f)(2).

///

46. During the PAGA Period, Defendant failed to reimburse Plaintiff and ER Aggrieved Employees for necessarily incurred business expenses, including home internet and home office supplies, incurred in carrying out their job duties for Defendant from home, in violation of Labor Code § 2802.

47. ER Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation of Labor Code § 2802, and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code § 2699(f)(2).

**WHEREFORE**, Plaintiff requests the following relief:

- A. Civil penalties pursuant to PAGA;
- B. Reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g); and
- C. All other relief as this Court deems proper.

Respectfully submitted,

HammondLaw, P.C.

By: Julian Hammond  
*Attorneys for Plaintiff and Aggrieved Employees*