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

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

15 Plaintiff,

16 vs.

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

19 Defendant.
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CASE NO. **22CV005286**

LABOR CODE PRIVATE ATTORNEY
GENERAL ACT REPRESENTATIVE ACTION

**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 failure to issue accurate itemized wage statements, failure to pay
11 overtime, and failure to pay all wages due at the time of discharge, in violation of Labor Code §§
12 226(a)(2), (a)(9), 510, 1194, and 201-202 and IWC Wage Order ("Wage Order") No. 4, § 3.

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

17 3. During the PAGA Period, Defendant classified AE Aggrieved Employees as outside
18 salespersons. However, during a portion of the PAGA Period, AE Aggrieved Employees spent more than
19 half of their working time at Defendant's place of business, that is, their home offices. As such, AE
20 Aggrieved Employees did not qualify for the outside salespersons exemption set out in IWC Wage Order
21 No. 4, § 2(M), and were therefore entitled to certain protections under the labor code, including accurate
22 wage statements. However, as set forth in detail below, during some parts of the PAGA Period, Defendant
23 failed to provide itemized wage statements, in violation of Labor Code § 226(a)(2) and (a)(9).

24 4. In addition, during some parts of the PAGA Period, Plaintiff and AE Aggrieved Employees
25 earned less than half of their compensation from commission and/or their compensation was below one
26 and one-half times the minimum wage. As such, they were entitled to overtime pay. Plaintiff and AE
27 Aggrieved Employees routinely worked more than 8 hours in a day and/or more than 40 hours in a
28 workweek. Defendant, however, failed to pay them overtime wages, in violation of Labor Code §§ 1194,
510, and Wage Order No. 4-2001, § 3.

5. As a result of failing to pay AE Aggrieved Employees overtime pay, Defendant failed to
pay them all wages due and owing at the time of their discharge from employment, in violation of Labor
Code §§ 201-203.

1 6. During the PAGA Period, Defendant required ER Aggrieved Employees to work remotely
2 from home. As a result, ER Aggrieved Employees incurred business expenses in direct discharge of their
3 job duties, including home internet, and home office supplies to conduct their basic job duties. Defendant
4 did not reimburse Plaintiff and ER Aggrieved Employees for these necessarily incurred expenses, in
5 violation of Labor Code § 2802.

PARTIES

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

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

JURISDICTION

12 9. This Court has jurisdiction over Plaintiff's PAGA claim pursuant to California Labor Code
13 § 2699(a).

14 10. This Court has jurisdiction over Plaintiff's claim for reasonable attorneys' fees and costs
15 pursuant to California Labor Code § 2699(g).

16 11. On November 5, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the
17 LWDA (via its website) and to Defendant (via certified mail). The LWDA has not provided notice to
18 Plaintiff regarding its intention to investigate or not investigate Plaintiff's claims.

VENUE

19 12. Venue is proper in the County of Alameda pursuant to California Code of Civil Procedure
20 §§ 395(a) and 395.5. Defendant has not designated a principal place of business anywhere in California.
21 Venue is therefore proper in any county, including County of Alameda. The unlawful acts alleged herein
22 have a direct effect on members of the Classes within the State of California and within Alameda County.

FACTUAL ALLEGATIONS SUPPORTING CLAIMS ON BEHALF OF AE AGGRIEVED

EMPLOYEES

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

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

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

9 15. Therefore, Plaintiff and AE Aggrieved Employees were entitled to the protections of the
10 California minimum wage laws, including the right to be provided itemized wage statements that include
11 entries for their total hours worked and applicable hourly rates pursuant to Labor Code § 226(a)(2) and
(9).

12 ***B. Defendant Failed to Issue Accurate Itemized Wage Statements to AE Aggrieved Employees***

13 16. During the PAGA Period, Defendant did not require Plaintiff and AE Aggrieved
14 Employees to record their hours worked, and Defendant did not maintain other policies and/or practices
15 to track Plaintiff and AE Aggrieved Employees' hours worked for payroll and wage statement purposes.

16 17. As a result of Defendant's failure to track AE Aggrieved Employees' hours worked and,
17 separately, as a result of failing to pay overtime wages (as alleged below), Defendant failed to furnish
18 them with wage statements containing entries for the total hours worked by the employee, all applicable
19 hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly
rate by the employee in violation of Labor Code § 226(a)(2) and (a)(9).

20 ***C. Defendant Failed to Pay Plaintiff and AE Aggrieved Employees Overtime Compensation***

21 18. As discussed above, during a portion of the PAGA Period, Plaintiff and AE Aggrieved
22 Employees did not meet the requirements of the outside salesperson exemption because they customarily
23 and regularly spent more than half of their working hours at their employer's place of business.

24 19. During some parts of the PAGA Period Plaintiff and AE Aggrieved Employees were paid
25 on commission only, and during some parts of the PAGA Period, they were paid a salary and
commissions.

26 20. When paid on commission only, Plaintiff and AE Aggrieved Employees' compensation
27 sometimes fell below one and one-half times the minimum wage during some of the pay periods.
28

21. When paid a salary and commissions, Plaintiff and AE Aggrieved Employees' compensation sometimes fell below one and one-half times the minimum wage and/or less than half of it was earned from commissions.

22. As a result, during some parts of the PAGA Period, Plaintiff and AE Aggrieved Employees were entitled to be paid overtime wages for all hours worked more than 8 in a day and for all hours worked more than 40 in a week.

23. Plaintiff and AE Aggrieved Employees routinely worked more than 8 hours in a day and/or more than 40 hours in a week. However, Defendant did not pay them overtime wages as required pursuant to Labor Code §§ 1194, 510.

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

24. Plaintiff's employment with Defendant ended in approximately the end of September 2021.

25. During the PAGA Period, as a consequence of Defendant's failure to pay overtime wages, Plaintiff and formerly employed AE Aggrieved Employees did not receive all compensation due to them upon separation from employment as required under Labor Code §§ 201-202.

FACTUAL ALLEGATIONS SUPPORTING CLAIMS ON BEHALF OF ER AGGRIEVED
EMPLOYEES

26. Beginning in March 2020, Defendant instituted policies and/or practices that required ER Aggrieved Employees to perform work-related duties from home.

27. As a result of working remotely, in direct consequence of carrying out their duties, or their obedience to the directions of the Defendant, ER Aggrieved Employees incurred home office expenses, including but not limited to charges for internet service, cellular phone service, and office supplies.

28. Defendant knew or should have known that ER Aggrieved Employees incurred these home offices expenses. However, Defendant did not maintain a policy and/or practice of reimbursing ER Aggrieved Employees for these expenses fully or at all.

29. As a result, Defendant violated Labor Code § 2802, and Plaintiff and ER Aggrieved Employees are entitled to reimbursement for these home office expenses, and their reasonable attorney's fees and costs.

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1 **CAUSE OF ACTION FOR PAGA CIVIL PENALTIES**

2 30. Plaintiff incorporates the foregoing paragraphs as fully set forth herein.

3 ***Civil Penalties Sought on Behalf of AE Aggrieved Employees***

4 31. Plaintiff seeks PAGA penalties on behalf of herself and AE Aggrieved Employees, and the
5 State of California for violations of Labor Code §§ 1194, 510, 201-202, and 226(a).

6 32. During the PAGA Period, Defendant failed to issue accurate itemized wage statements to
7 AE Aggrieved Employees, in violation of Labor Code § 226(a)(2) and (a)(9).

8 33. During the PAGA Period, AE Aggrieved Employees were entitled to overtime pay when
9 their compensation was either less than one and one-half of minimum wage or when commissions
10 represented less than half of their earnings. Yet, when AE Aggrieved Employees' compensation entitled
11 them to overtime, Defendant failed to pay overtime when AE Aggrieved Employees worked over 8 hours
12 in a day and/or over 40 hours in a workweek, in violation of Labor Code §§ 1194, 510.

13 34. As a result, Defendant failed to pay AE Aggrieved Employees all wages due to them at the
14 time of discharge from employment, in violation of Labor Code §§ 201-202.

15 35. Pursuant to Labor Code § 226.3, Plaintiff and AE Aggrieved Employees are entitled to two
16 hundred fifty dollars (\$250) for each initial violation of Labor Code § 226(a)(2) and (a)(9), and one
17 thousand dollars (\$1,000) for each subsequent violation.

18 36. Pursuant to Labor Code § 2699(f)(2), Plaintiff and AE Aggrieved Employees are entitled
19 to one hundred dollars (\$100) for each initial violation of Labor Code § 510, 1194, for each initial violation
20 of Labor Code §§ 201-202, and two hundred dollars (\$200) for each subsequent violation of each of these
21 Labor Code provisions.

22 ***Civil Penalties Sought on Behalf of ER Aggrieved Employees***

23 37. Plaintiff also seeks PAGA penalties on behalf of herself and ER Aggrieved Employees,
24 and the State of California for violations of Labor Code § 2802.

25 38. During the PAGA Period, Defendant failed to reimburse Plaintiff and ER Aggrieved
26 Employees for necessarily incurred business expenses, including home internet and home office supplies,
27 incurred in carrying out their job duties for Defendant from home.

28 39. Pursuant to Labor Code § 2699(f)(2), Plaintiff and ER Aggrieved Employees are entitled
to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent
violation.

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1 **PRAYER FOR RELIEF**

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

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

6 Dated: January 10, 2022

Respectfully submitted,

7 HammondLaw, P.C.

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9 By: Julian Hammond

10 *Attorneys for Plaintiff and Aggrieved Employees*