



December 10, 2021

VIA ELECTRONIC MAIL

PAGAFilings@dir.ca.gov

Re: *PAGA CLAIMS NOTICE*

Jasmine Valenzuela v. Expatiate Communication Inc. et al.

To Whom It May Concern:

Please be advised that this law firm represents *Jasmine Valenzuela* (“Plaintiff”) in claims arising from her employment with Expatiate Communication Inc., and Does 1 through 25 (“Defendants”). Plaintiff is an “aggrieved employee” as defined by Labor Code §§ 2699, *et seq.*, due to Defendants violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

During her employment with Defendants, Plaintiff, who worked as a speech and language pathologist assistant, and other similarly aggrieved employees, regularly worked shifts from 8 a.m. to 4:30 p.m., with an hourly rate of \$26.50 per hour. Plaintiff’s employment commenced in approximately February 2020, ending approximately on September 31, 2021. Throughout her employment, Defendants obligated Plaintiff and similarly aggrieved employees to complete tasks outside of her scheduled workday. On off hours, Defendants specifically instructed Plaintiff to answer phone calls and text messages immediately and was not permitted to resume those tasks at the start of her next workday.

At first, Defendants instructed Plaintiff to record and submit timesheets whenever hours were incurred outside of her work schedule, so that they may be compensated. Even though these additional hours worked were in excess of 40 hours per week, or 8 hours per day, Defendants paid these hours at the regular rate, not the overtime rate. Beginning in or around March of 2020, Defendants instructed Plaintiff to no longer submit any timesheets for hours worked outside of her work schedule, telling her “next time you cannot document these hours.” Defendants still obligated Plaintiff to work at all hours of the week, and to be available for work assignments at all hours of the week. If Plaintiff did not promptly answer work calls and text messages outside of work hours, Defendants would repeatedly call Plaintiff until she did answer, and verbally chastise her for not responding sooner. On information and belief, Defendants repeated these same work practices with similarly aggrieved employees. As a result of these practices, Defendants failed to compensate Plaintiff and similarly aggrieved employees for approximately 2 – 5 hours of work per week.

Beginning in or around January of 2021, Defendants experienced a shortage of employees. Rather than hire new employees, Defendants instructed Plaintiff and similarly

aggrieved employees to work an additional 5-10 hours per week, each. These additional hours would be documented as “Z Time”. Defendants maintained this was for tax purposes, and instructed employees to submit timesheets documenting all hours of Z Time worked per week. Defendants documented Z Time hours on Plaintiff and similarly aggrieved employees’ paystubs as “bonus” payments, and paid them at the regular wage rate as opposed to the overtime wage rate, even though these Z Time hours worked were in excess of 8 hours per day, and/or in excess of 40 hours per week.

Defendants obligated Plaintiff and similarly aggrieved employees to record fictitious meal periods on their timekeeping app, and then work during these meal periods. Defendants’ intention in “clocking out” employees in this manner, even though they knew Plaintiff and similarly aggrieved employees continued to work, was to both create a false record of compliance with the Labor Code and Wage Order requirements that employees be provided adequate meal and rest periods, as well as to save money at the expense of Plaintiff and similarly aggrieved employees, who would work for Defendants without compensation during such periods. As a result of these practices, Defendants failed to compensate Plaintiff and similarly aggrieved employees in the amount of approximately 2.5 hours per week, per employee. Further, Plaintiff and similarly aggrieved employees were not permitted to cease work during their legally required rest breaks, and were required to respond to immediately respond to phone calls and messages from supervisors and clients regardless of whether they were taking a rest break. As a result, there were interrupted

As if Defendants had not already saved enough money at the expense of Plaintiff and similarly aggrieved employees, Defendants also failed to reimburse them for necessarily incurred business expenses. Specifically, Defendants issued faulty Chrome Book laptops to Plaintiff and similarly aggrieved employees, which were not compatible with the required “Virtual Services” application, which employees were required to utilize to complete work duties. Plaintiff and similarly aggrieved employees would contact Defendants’ tech support staff, who would confirm that the computers were at fault, rather than mere user error. Nevertheless, when Plaintiff and similarly aggrieved employees purchased laptops to conduct work, Defendants refused to reimburse Plaintiff and similarly aggrieved employees for these purchases. Plaintiff herself incurred \$1300 in expenses in purchasing a new laptop. Furthermore, Plaintiff and similarly aggrieved employees were required to purchase printers, printer paper, ink cartridges, and laminators, all of which went unreimbursed by Defendants.

As a result of Defendants’ failure to pay all hours worked, and rest period and meal break premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and other similarly aggrieved employees. As a result of these issues, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 (“Wage Order 4”):

Meal and Rest Period Violations

Defendants required that Plaintiff and other similarly aggrieved employees to work throughout their rest and meal periods, and failed to provide Plaintiff and other similarly

aggrieved employees who worked 6 hours or more the meal and rest periods as required by law, and failed to pay the full statutory penalty for those missed meal and rest periods. As a result, Plaintiff and other similarly aggrieved employees are entitled to recover additional compensation for all meal and rest periods that were missed, but not paid for, per Labor Code §§ 226.7, 512, 558 and 1198.

Not All Hours Paid

In violation of Industrial Welfare Commission Order No. 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and 1198, Defendants failed to compensate Plaintiff and similarly aggrieved employees for all hours worked. Specifically, Plaintiff and other similarly aggrieved employees were required to keep timesheets and submit them to Defendants, Defendants routinely failed to pay Plaintiff and other similarly aggrieved employees for all hours recorded on their timesheets and instructed Plaintiff and similarly aggrieved employees to submit timesheets which did not depict the full number of hours worked. Plaintiff and similarly aggrieved employees are entitled to recover the unpaid balance of all their unpaid hours Defendants owe them, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

Failure to Pay the Minimum Wage

In violation of Industrial Welfare Commission Order No. 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194 and 1198, Defendants failed to compensate Plaintiff and similarly aggrieved employees at the minimum wage. As discussed above, Defendants refused to pay Plaintiff and similarly aggrieved employees for some hours these employees worked, but for such hours these employees were completely unpaid due to Defendants' having clocked them out for fictitious meal periods, or for arbitrarily deducting hours to be paid to Plaintiff and similarly aggrieved employees. Accordingly, Defendants failed to pay Plaintiff and similarly aggrieved employees the required minimum wage for these deducted hours, due to there being no compensation at all for these deducted hours.

Failure to Pay Overtime

During the course of Plaintiff's employment, Defendants failed to compensate Plaintiff and other similarly aggrieved employees for all overtime and double-time hours worked as required under the Industrial Welfare Commission Order No. 4 and Labor Code §§ 200, 226, 500, 510, 1194, and 1198. Specifically, Plaintiff and similarly aggrieved employees regularly worked shifts over 8 hours per day, and worked over 40 hours per week. However, Defendants did not pay Plaintiff and similarly aggrieved employees at the overtime rate for hours worked in excess of forty per week or 8 hours per day, in violation of Wage Order 4. Additionally, Defendants did not pay Plaintiff and similarly aggrieved employees the double-time rate for hours worked in excess of twelve per day, or in excess of eight on the seventh consecutive day of work. Defendants' conduct described herein violates

the Industrial Welfare Commission Orders and Labor Code §§ 200, 226, 500, 510, and 1198. Therefore, pursuant to Labor Code §§ 200, 203, 226, 226.7, 558 and 1194, Plaintiff and similarly aggrieved employees are entitled to recover the unpaid balance of overtime compensation Defendants owe Plaintiff plus interest, penalties, attorneys' fees, expenses, and costs of suit.

Wage Statement Violations

Defendants were obligated to furnish Plaintiff and similarly aggrieved employees with complete and accurate itemized wage statements that show, among other things, total gross wages earned and rest period premium wages earned. See Labor Code §§ 226(a) and 1174(d); Wage Order 4, § 7. As a result of Defendants' failure to pay all hours worked, all overtime, and meal period and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff and similarly aggrieved employees in violation of Labor Code § 226. Defendants' failure to comply with their wage statement obligations was knowing and intentional, and Plaintiff and similarly aggrieved employees have suffered "actual injuries" as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that separating employees timely receive all of their final wages at the time of termination. Defendants failed to timely pay Plaintiff and other similarly aggrieved employees all of their final wages at the time of termination which include, among other things, unpaid hours worked, unpaid overtime, meal period premium and rest period premium wages owing, up to thirty (30) days from the time the wages were due. Defendants continue to fail to pay Plaintiff and other similarly aggrieved employees all earned wages at the end of employment pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages due to Plaintiff and other similarly aggrieved employees was willful and, consequently, they are entitled to waiting time penalties under Labor Code § 203.

Failure to Reimburse Business Expenses

Labor Code § 2802 requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequences of the discharge of his or her duties. Defendants required Plaintiff and other similarly aggrieved employees were not reimbursed for necessary expenses on computers, printers, laminators, and other related equipment in order to work remotely. Plaintiff has incurred reasonable and necessary expenses in the course of completing her job duties, which were not reimbursed by Defendants. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802.

As an "aggrieved employee," Plaintiff will initiate a civil action on behalf of herself and other similarly aggrieved employees to recover damages, statutory penalties, civil penalties (including an amount equal to the unpaid wages), and punitive damages resulting

from the wage and hour violations alleged herein. Based on Plaintiff own investigation, and on information and belief, Defendants committed the following violations:

- a. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code §§ 226.7 and 512, 516, 558 and 1198 by failing to provide all legally required meal and rest period premiums to Plaintiff and similarly aggrieved employees;
- b. Defendants violated Labor Code §§ 510, 1194, 1194.2, 1197, 1198 by failing to pay all worked overtime hours to Plaintiff and other similarly aggrieved employees;
- c. Defendants violated Industrial Welfare Commission Order No. 4 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and 1198 by failing to Pay Plaintiff and similarly aggrieved employees for all hours actually worked;
- d. Defendants violated Labor Code § 226 by failing to provide Plaintiff and similarly aggrieved employees with accurate and compliant itemized wage statements; and
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due, including, but not limited to meal and rest period premium wages to Plaintiff and similarly aggrieved employees upon their separation of employment.
- f. Defendant violated Labor Code § 2802 by failing to indemnify Mr. Fahey and similarly aggrieved employees for all necessary expenditures or losses incurred in direct consequences of the discharge of their job duties

Pursuant to Labor Code § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,



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