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Individually and on behalf of all other aggrieved employees

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

05/18/2022 at 09:41:12 AM

By: Cheryl Clark, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Clark Chaney, individually and on behalf of
all other aggrieved employees,

Plaintiff,

vs.

Alcon Vision, LLC.; and Does 1 through
20, inclusive,

Defendants.

Case No. **22CV011475**

REPRESENTATIVE ACTION COMPLAINT
FOR:

VIOLATION OF THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (CAL. LABOR CODE §§ 2698,
ET SEQ.)

1 Plaintiff Clark Chaney, individually and on behalf of other aggrieved employees, hereby
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff brings this representative action against Defendants Alcon Vision, LLC
5 (“Defendant Alcon”), and Does 1 through 20, inclusive (collectively, “Defendants”), on behalf
6 of himself individually and all other aggrieved employees by Defendants throughout California.
7 Plaintiff seeks to recover civil penalties for all California-based aggrieved employees during the
8 “Relevant Time Period” (defined as one year and sixty-five before the filing of this action until
9 the date of commencement of trial) who incurred wage and hour violations and losses as
10 hereinafter described.

11 2. On February 21, 2022, Plaintiff gave notice of these claims to the California Labor
12 and Workforce Development Agency (“LWDA”) and to the agent for service of process for each
13 Defendant. On Plaintiff has not received a response from the LWDA indicating that it intends to
14 investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements under the
15 PAGA. Plaintiff asserts claims for civil penalties as a representative of the State of California,
16 as authorized by the Private Attorneys General Act of 2004 (“PAGA”), and to the extent
17 permitted by law, on behalf of aggrieved employees who held the positions identified herein and
18 suffered one or more of the violations alleged. Labor Code §§ 2698, *et seq.*

19 3. On March 23, 2022, Defendant Alcon transmitted to Plaintiff and the LWDA
20 correspondence outlining its efforts to cure its violation of Labor Code § 226(a)(8) violation for
21 failing to list the correct legal entity as the employer. As an attempt to cure the issue pursuant to
22 Labor Code §2899.3(c)(2)(A), Defendant Alcon purportedly reissued to its current and former
23 employees’ electronic wage statements with different legal entity information than what had been
24 originally provided to the aggrieved employees. On April 13, 2022, Plaintiff disputed this cure
25 effort pursuant to Labor Code §2899.3(c)(3) arguing Defendant Alcon failed to properly cure the
26 electronic wage statements because Defendant Alcon had not actually reissued its electronic
27 wage statements as required under Labor Code § 2699(d). On April 29, 2022, the LWDA notified
28 the Parties of its determination that Defendant Alcon did not properly cure its Labor Code §

1 226(a)(8) violation. The time period for Defendant Alcon to further cure this issue has elapsed,
2 and the LWDA did not grant Defendant Alcon any additional time to do so. As such, pursuant
3 to Labor Code § 2699.3(c)(3), Plaintiff may proceed with this PAGA action.

4 4. Through this action, Plaintiff alleges that Defendants has engaged in a systematic
5 pattern of wage and hour violations under the California Labor Code.

6 5. Plaintiff is informed and believes, and thereon alleges, during the Relevant Time
7 Period, Defendants had a consistent policy of violating state wage and hour laws by, among other
8 things:

9 (a) Failure to provide accurate and itemized wage statements;

10 (b) Failure to reimburse Plaintiff and other aggrieved employees for all
11 reasonable and necessary business expenses;

12 (c) Failure to timely pay all wages due upon separation of employment; and

13 (d) Failure to provide a written compensation plan to aggrieved employees.

14 6. Plaintiff brings this representative action seeking monetary relief against
15 Defendants on behalf of themselves and other aggrieved employees to recover, among other
16 things, penalties, attorney's fees, costs and expenses pursuant to the PAGA.

17 **JURISDICTION AND VENUE**

18 7. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional limits
19 of the Superior Court and will be established according to proof at trial.

20 8. The Superior Court has jurisdiction over this action pursuant to the California
21 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes,
22 except those given by statutes to other courts. The statutes under which this action is brought do
23 not specify any other basis for jurisdiction.

24 9. The Superior Court has jurisdiction over all Defendants because, upon
25 information and belief, they are citizens of California, have sufficient minimum contacts in
26 California, or otherwise intentionally avail themselves of the California market so as to render
27 the exercise of jurisdiction over them by the California courts consistent with traditional notions
28 of fair play and substantial justice.

10. Venue is proper in the Superior Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county. Further, Defendants failed to file and obtain a certificate of qualification and designate its principal place of business in California. As a foreign corporation that is not qualified to do business in California, it may be sued in any county in the state. *Easton v. Superior Court* (1970) 12 Cal. App. 3d 243.

THE PARTIES

11. Plaintiff is a citizen of California and worked for Defendants as a sales representative in California during the Relevant Time Period as alleged herein.

12. Plaintiff is informed and believes, and thereon alleges, that Defendants is a corporation doing business throughout the State of California, and at all times hereinafter mentioned, an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California. Defendants is headquartered in Fort Worth, TX and operates multiple facilities within California.

13. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

14. Plaintiff is informed and believes and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

1 16. Plaintiffs are informed and believe, and thereon allege, that each of Defendants is
2 in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
3 occurrences, and transactions alleged herein.

4 **GENERAL ALLEGATIONS**

5 17. At all relevant times mentioned herein, Defendants employed Plaintiff and other
6 persons as salespersons.

7 18. Defendants employed Plaintiff during the Relevant Time Period.

8 19. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
9 herein, Defendants were advised by skilled lawyers, employees, and other professionals who
10 were knowledgeable about California's wage and hour laws, employment and personnel
11 practices, and the requirements of California law.

12 20. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and IWC Wage
14 Orders.

15 21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and aggrieved employees were entitled to receive itemized
17 wage statements that accurately showed the following information pursuant to the Labor Code:
18 (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate
19 units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
20 deductions, provided that all deductions made on written orders of the employee may be
21 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
22 which the employee is paid; (7) the name of the employee and only the last four digits of his or
23 her social security number or an employee identification number other than a social security
24 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at
26 each hourly rate by the employee. However, Defendants have failed to furnish accurate and
27 itemized wage statements to Claimant and other aggrieved employees including, for example,
28 failing to provide wage statements with the correct name and address of the legal entity of the

1 employer. Though Defendants attempted to cure this violation pursuant to Labor Code
2 §2899.3(c)(2)(A), the LWDA determined that in its April 29, 2022, letter that the steps taken by
3 Defendants had not cured the violation. As the time to cure the violation has elapsed and
4 Defendants was not granted additional time to correct the issue, Plaintiff and aggrieved
5 employees did not receive accurate and itemized wage statements, in violation of the Labor Code.

6 22. Plaintiff is informed and believe, and thereon allege, that Defendants was required
7 to indemnify and reimburse Plaintiff and other aggrieved employees for all expenditures or losses
8 caused by the employer's want of ordinary care and/or incurred in direct consequent of the
9 discharge of their duties but failed to indemnify and reimburse Plaintiffs and other aggrieved
10 employees. For example, Defendants failed to reimburse Plaintiff and other aggrieved
11 employees for personal cellular device for work related purposes, as well as home internet usage.
12 Defendants also failed to reimburse Plaintiffs and other aggrieved employees for the cost of
13 personal protective equipment — such as masks, gloves, and hand sanitizer — as it related to
14 their work. Thus, in violation of the Labor Code, Plaintiffs and aggrieved employees did not
15 receive reimbursements for all business expenses.

16 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and aggrieved employees who separated from Defendants were
18 entitled to timely payment of wages upon separation of employment. In violation of the
19 California Labor Code, Plaintiffs and these aggrieved employees did not receive payment of all
20 wages including, but not limited to, all commissions owed. As a separate and non-derivative
21 claim, Defendants failed to timely pay Plaintiff all final wages owed at the time of termination.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants failed to
23 provide Plaintiff and other aggrieved employees with a commissions agreement, in writing, that
24 outlined the terms of the commissions arrangement. Moreover, Defendants failed to maintain a
25 signed copy or receipt of the commissions agreement between Plaintiff and the aggrieved
26 employees within the employee's personnel files.

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28 ///

1 **FIRST CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

3 25. Plaintiffs hereby re-alleges and incorporates by reference all paragraphs above as
4 though fully set forth herein.

5 26. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
8 violation of the code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of themselves or herself and other current or former employees
10 pursuant to the procedures specified in Labor Code § 2699.3.

11 27. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violations and two
14 hundred dollars (\$200.000) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 28. Defendants' conduct with respect to Plaintiffs and other aggrieved employees
17 violates numerous Labor Code sections including, but not limited to, the following:

- 18 a. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiffs
19 and other aggrieved employees for all reasonable and necessary business
20 expenses as herein alleged; and
21 b. Violation of Labor Code § 226 for failure to provide accurate itemized wage
22 statements to Plaintiffs and other aggrieved employees as herein alleged; and
23 c. Violation of Labor Code § 2751 for failure to provide a written compensation
24 plan, as well as a signed receipt of the contract between the Parties.

25 29. Plaintiff is an "aggrieved employee" because he was employed by the alleged
26 violator and had one or more of the alleged violations committed against him, and therefore are
27 properly suited to represent the interests of all other aggrieved employees.
28

30. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA. Further, Plaintiff has sufficiently disputed Defendants' effort to cure its violation of Labor Code §266 and, as such, is still entitled to bring this action pursuant to Labor Code § 2699.3(c)(3).

31. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties for violations of the Labor Code sections cited above.

32. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of all others similarly situated, pray for judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees.

2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and

3. For such other relief as the Court deems just and proper.

Dated: May 17, 2022

LEBE LAW, APLC

By:

Jonathan M. Lebe

Zachary T. Gershman

Shigufa K. Saleheen

Attorneys for Plaintiff Clark Chaney, individually
and on behalf of all aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: May 17, 2022

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