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11 **Pro hac vice motion forthcoming*

12 *Counsel for Plaintiffs and the Aggrieved Employees*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
05/27/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

CGC-22-599875

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN FRANCISCO**
15 **UNLIMITED CIVIL JURISDICTION**

16 JACKIE WILLIAMS and DAWN DURBIN, on
behalf of themselves and all those similarly
17 situated,

18 Plaintiffs,

19 v.

20 FIRST AMERICAN TITLE INSURANCE
21 COMPANY and DOES 1 through 10, inclusive,

22 Defendants.

Case No.

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

Plaintiffs Jackie Williams and Dawn Durbin, in their capacity as Aggrieved Employees under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”), allege as follows:

SUMMARY OF CLAIMS

1. Plaintiff Jackie Williams is an individual who worked as an Escrow Assistant for First American Title Insurance Company (“First American”). Plaintiff Dawn Durbin is an individual who has worked as an Escrow Officer for First American. Plaintiffs bring this PAGA action on behalf of themselves and other Aggrieved Employees of First American, as set forth below.

2. Plaintiffs allege that First American has violated and continues to violate the California Labor Code protections applicable to Escrow Assistants and Escrow Officers (collectively, “Escrow Employees”) because First American classifies Escrow Employees as non-exempt employees but fails to pay them all overtime compensation to which they are entitled.

3. Plaintiffs allege that First American has violated and continues to violate the California Labor Code protections applicable to Escrow Employees because First American fails to reimburse them for reasonable and necessary business expenses.

4. Plaintiffs bring their claims under PAGA on behalf of all Escrow Employees in California who worked from March 16, 2021 through the date of the final disposition of this action (“Aggrieved Employees”).

JURISDICTION AND VENUE

5. The Court has jurisdiction over Plaintiffs' claims under the California Labor Code.

6. The Court has personal jurisdiction over this matter because First American conducts substantial business activity in this state and is engaged in the unlawful acts described herein in this state.

7. Venue is proper in this county under California Code of Civil Procedure § 395.5 because a substantial part of the events and omissions giving rise to the claims alleged herein occurred in this county.

8. Notice of Plaintiffs' claims on behalf of Aggrieved Employees was provided to the California Labor & Workforce Development Agency ("LWDA") and to First American on March 15, 2022. The LWDA has not taken any action with regard to the claims, including providing notice

1 of an intent to pursue the claims.

2 **THE PARTIES**

3 9. First American Title Insurance Company is a California corporation with its
4 corporate headquarters and primary place of business in Santa Ana, California.

5 10. The true names and capacities of persons or entities, whether individual, corporate,
6 associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently unknown to
7 Plaintiffs, who therefore sue Defendant by such fictitious names under Code of Civil Procedure §
8 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants
9 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
10 herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
11 capacities of the Defendants designated hereinafter as DOES when such identities become known.
12 As such First American Title Insurance Company and the DOE Defendants shall be referred to
13 collectively as “First American.”

14 11. Plaintiff Jackie Williams is a resident of San Jose, California. Williams worked as
15 an Escrow Assistant from approximately April 2015 to June 2021 in San Francisco, California.

16 12. Plaintiff Dawn Durbin is a resident of Newman, California. Durbin worked as an
17 Escrow Officer from approximately July 2020 to April 2021 in San Jose, California.

18 **FACTUAL BACKGROUND**

19 **A. Escrow Employees – Failure to Pay Overtime, Provide Compliant Meal and** 20 **Rest Breaks, Provide Accurate Wage Statements, and Pay Timely Wages at** 21 **Separation**

22 13. First American classifies Escrow Employees as non-exempt employees and requires
23 them to acquire, organize and prepare necessary documents to establish escrow accounts for the
24 closing of a property sale and communicate with realtors, sellers and borrowers to facilitate this
25 process.

26 14. Although Escrow Employees regularly spend a significant amount of time beyond 40
27 hours per week and/or eight hours per day completing their required duties, First American does not
28 pay them for overtime hours worked. Rather, First American pays Escrow Employees a set amount
during this period, regardless of how many overtime hours Escrow Employees actually work.

1 15. Plaintiffs regularly worked over 40 hours per week and/or over eight hours per day
2 during their employment as Escrow Employees and were not paid overtime compensation.

3 16. In addition, First American has common, company-wide policies and/or practices of
4 failing to relieve Escrow Employees of all duties so that they may take the meal and rest periods to
5 which they are entitled by law.

6 17. As a matter of common, company-wide policy and/or practice, First American also
7 fails to ensure that it pays Escrow Officers proper meal and rest break penalties when they do not
8 receive the meal and rest breaks to which they are entitled by law.

9 18. First American provided Plaintiffs and other Escrow Employees with inaccurate
10 wage statements, in violation of Labor Code § 226(a), because the statements failed to reflect all the
11 hours Plaintiffs and other Escrow Employees worked and their accurate gross and net wages.

12 19. Because Escrow Employees, including Plaintiffs, were owed overtime during their
13 employment and at the time of their separation, First American violated Labor Code § 204 for failing
14 to timely pay Escrow Employees their full wages during their employment, and §§ 201 and 202 for
15 failing to timely pay wages due to them upon separation.

16 **B. Escrow Employees – Failure to Reimburse for Necessary Business Expenses,**
17 **Provide Accurate Wage Statements, and Pay Timely Wages During**
18 **Employment and at Separation.**

19 20. **Expense Reimbursement.** Escrow Employees incur necessary and reasonable
20 business expenses including, but not limited to, expenses for cell phone and personal data/internet
21 usage and the purchase of work-related equipment, such as printers.

22 21. First American's expense reimbursement policy does not reimburse Escrow
23 Employees for these out-of-pocket expenses.

24 22. First American's policies and practices violate Labor Code § 2802, which requires
25 every California employer to indemnify its employees for all reasonable and necessary expenditures
26 or losses incurred by the employees in direct consequence of the discharge of his or her duties, or of
27 his or her obedience to the directions of the employer.

28 23. **Unlawful Deductions.** First American's policies and practices violate Labor Code
§ 221, which prohibits unlawful deductions—such as deductions for necessary and reasonable

1 business expenses—from employees’ wages.

2 24. **Inaccurate Wage Statements.** First American provided Plaintiffs and Escrow
3 Employees wage statements that did not separate out from their commissions amounts used to cover
4 business expenses, in violation of Labor Code § 226(a). Further, the statements did not accurately
5 reflect Escrow Employees’ total gross and net wages.

6 25. **Late Payment During Employment.** Because Plaintiffs and Escrow Employees
7 were owed, and did not receive, expense reimbursement in their paychecks, First American violated
8 Labor Code § 204 by failing to pay these employees timely wages during employment.

9 26. **Waiting Time Penalties.** Because Escrow Employees who were terminated from or
10 resigned from First American were owed expense reimbursements at the time of their separation,
11 First American violated Labor Code §§ 201, 202 for failing to pay employees timely wages upon
12 separation.

13 **CLAIM FOR RELIEF**

14 **Violation of the Private Attorneys General Act (California Labor Code § 2698 *et seq.*)**

15 27. Plaintiffs, on behalf of themselves and all Aggrieved Employees, reallege and
16 incorporate by reference all other paragraphs as if they were set forth again herein.

17 28. Plaintiffs are Aggrieved Employees under PAGA, as they were employed by First
18 American during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, they seek to recover on behalf of themselves and all other
20 current and former Aggrieved Employees of First American, the civil penalties provided by PAGA,
21 plus reasonable attorney’s fees and costs.

22 29. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor
23 Code provisions:

24 A. Failure to pay overtime wages in violation of Labor Code §§ 510, 588, 1994
25 and 1998;

26 B. Failure to provide compliant meal and rest periods in violation of California
27 Labor Code §§ 218.5, 226.7, 512, 1198, and IWC Order No. 4-2001;

28 C. Failure to provide itemized wage statements in violation of Labor Code §§

1 226(a), 1174, and 1174.5;

2 D. Failure to reimburse for all reasonably necessary expenditures and losses
3 incurred by Escrow Employees in direct consequence of the discharge of their duties, in violation of
4 Labor Code § 2802;

5 E. Unlawful deductions, in violation of Labor Code § 221;

6 F. Failure to provide prompt payment of wages upon termination and resignation
7 in violation of Labor Code §§ 201, 202; and,

8 G. Failure to timely pay all wages twice during each calendar month on days
9 designated in advance by the employer as the regular paydays in violation of Labor Code § 204.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, on behalf of the State of California and Aggrieved Employees,
12 pray for the following relief:

13 A. Civil penalties pursuant to PAGA;

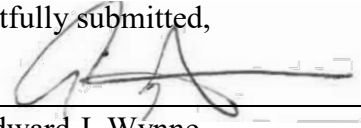
14 B. Attorneys' fees pursuant to Labor Code § 2699(g)(1) and all other bases for fees in
15 the Labor Code;

16 C. Costs of suit, including expert fees and costs; and

17 D. Such other and further relief as the Court deems just and proper.

18
19
20 Dated: May 27, 2022

Respectfully submitted,

21 By: 

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