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October 29, 2023

CASE NUMBER LWDA-CM-877969-22

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail to:

Human Resources
AT&T Services, Inc.
Pacific Bell Telephone Company
430 Bush, St.
San Francisco, CA 94108

AT&T Services, Inc.
Pacific Bell Telephone Company
430 Bush, St.
San Francisco, CA 94108

C T Corporation System
Resident Agent for Service for
AT&T Services, Inc.
Pacific Bell Telephone Company
330 N Brand Blvd Ste 700
Glendale, CA 91203

Re: Joy Macopson v. Pacific Bell Telephone Company, AT&T Services, Inc.
California Labor Code § 2699 Penalties; Amended Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Joy Macopson ("Plaintiff") and a proposed group of current and former employees working for Pacific Bell Telephone Company and AT&T Services, Inc. ("Defendants") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 233-234, 245-249, 256, 510, 512,

1174, 1194, 1194.2, 1197, 1197.1, 1198,¹ 2802 as well as the applicable IWC Wage Order. Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of the following groups of aggrieved employees:

- (1) All individuals who are or were employed by Defendant Pacific Bell Telephone Company or its predecessor or merged entities in California in an hourly, non-exempt position;*
- (2) All individuals who are or were employed by Defendant AT&T Services, Inc., or its predecessor or merged entities in California as hourly, non-exempt employees within a technician position.*

Collectively, these groups are hereinafter referred to as the “Aggrieved Employees” or “aggrieved employees.”

Factual Background & Theories of Labor Code Violations

Plaintiff and the aggrieved employees are and were employed by Defendants, a telecommunications company that provides telephone service in California. Defendants hired Plaintiff as a customer service representative in April 1998, assigned to their office in Van Nuys, California. Defendants paid Plaintiff \$38 per hour. Plaintiff suffered the violations listed in this letter while employed by Defendants, and timely filed her original PAGA notice on April 10, 2022. This Amended PAGA Notice incorporates by reference, and relates back to, the initial PAGA notice. Plaintiff reserves her right to assert any other related claims and theories discovered after the sending of this notice.

- i. Plaintiff and the Aggrieved Employees Were Not Compensated for All Hours Worked—And Thus Were Not Paid The Required Minimum Wage And/Or Overtime.

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Labor Code § 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 7-2001 § 4 also obligates employers to pay each

¹ All alleged violations of IWC Wage Orders are also deemed to be alleged violations of Labor Code §§ 1197 and 1198.

employee minimum wages for all hours worked.

Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of failing to compensate Plaintiff and other aggrieved employees with minimum wages for all hours worked or otherwise under Pacific Bell's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including but not limited to the time it took employees to turn on their computers before clocking in and to shut them down after clocking out; performing work activities outside their regularly scheduled shift; performing work activities while travelling to and from work; requiring employees work-through meal periods without pay; controlling employees during their meal periods without paying them for time worked; and utilizing a time entry system did not permit employees to modify their start and end times.

Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of requiring Plaintiff and other aggrieved employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including but not limited to the time it took employees to turn on their computers before clocking in and to shut them down after clocking out; performing work activities outside their regularly scheduled shift; performing work activities while travelling to and from work; requiring employees work-through meal periods without pay; controlling employees during their meal periods without paying them for time worked; utilizing a time entry system did not permit employees to modify their start and end times; and failing to include all remuneration for employment—including, but not limited to, non-cash benefits and other incentive compensation—in calculating the regular rate of pay for overtime, meal/rest period premium, and sick leave purposes.

In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5 Cal.5th 829, that an employee must be compensated for any time in which they are under the control of their employer, and performing work, even if that amount of time is limited to a few minutes per day. Thus, by not compensating Plaintiff and the aggrieved employees for all the time spent working—regardless of the amount—Defendants have violated the Labor Code and the Wage Order.

Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover

liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the aggrieved employees are not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiff and all aggrieved employees with compensation for all hours worked, including overtime hours, each are entitled to recover liquidated damages under Labor Code § 1194.2 through PAGA. Based upon these same factual allegations, Plaintiff also seeks penalties on behalf of all aggrieved employees under Labor Code § 1199.

Finally, Plaintiff and the aggrieved employees were not compensated for all time worked at the appropriate rate of pay in violation of Labor Code §§ 510, 1197, and 1198. As of today's date, Plaintiff and other aggrieved employees have not been paid the unpaid balance of their time worked. Additionally, to their knowledge Defendants have not paid a civil penalty for its nonperformance in violation of Labor Code §§ 1194 and 1197.1.

ii. Plaintiff and the Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time.

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958-959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the

nature of the work prevented officers from being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of compelling Plaintiff and other aggrieved employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by: establishing efficiency standards that make it impossible, and/or punish employees for, taking meal periods; requiring they turn on their computers before clocking in and to shut them down after clocking out, thereby forcing them to work off-the-clock; performing work activities outside their regularly scheduled shift; performing work activities while travelling to and from work; pressuring employees to forgo opportunities to take off-duty meal periods; interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; exerting control over employees’ activities while they are on their meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; auto-deducting meal periods that could not be auto-deducted by law or during which employees worked; and failing to provide premium wages equivalent to an hour of an employee’s regular rate of pay for noncompliant meal periods.

By failing to provide lawful meal periods or compensation in lieu thereof, Defendants willfully violated Labor Code §§ 226.7 and 512.

iii. Plaintiff and the Aggrieved Employees Are Not and Were Not Provided with Rest Periods of Ten Minutes of Interrupted Off-Duty Time.

According to the Industrial Welfare Commission, an employer must authorize and permit all employees to take rest periods in the middle of each work period. Labor Code § 226.7 requires an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that a lawful rest period was not provided.

Plaintiff is informed and believes, and based thereon alleges, that Defendants had and have a policy or practice of compelling Plaintiff and other aggrieved employees to work over four-hour periods (or major fractions thereof) without authorizing and permitting the PAGA Plaintiffs and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation by: setting efficiency standards, which are unrealistic and do not permit nor account for rest periods; punishing employees for not meeting those standards, thereby pressuring them to forgo rest periods; requiring they turn on their computers before clocking in and to shut them down after clocking out, thereby forcing them to work off-the-clock; performing work activities outside their regularly scheduled shift; performing work activities while travelling to and from work; failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not providing them in a timely fashion; not permitting employees to leave the premises; failing to provide cool-down rest periods as required under California Code of Regulations, Title 8, Section 3395; failing to provide premium wages equivalent to an hour of an employee's regular rate of pay for missed rest periods; and otherwise requiring on-duty/on-call rest periods. The PAGA Plaintiffs also allege Pacific Bell did not provide compensation to the PAGA Plaintiffs and other aggrieved employees for noncompliant rest periods. By failing to provide lawful rest periods or compensation in lieu thereof, Pacific Bell willfully violated Labor Code § 226.7.

iv. Defendants Violated and Continue to Violate Paid Sick Leave Laws.

Plaintiff is informed and believes, and based thereon alleges, that Defendants has or had a policy or practice of failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws

(including, without limitation, Labor Code §§ 233–234, 245–249). Plaintiff is further informed and believes, and based thereon alleges, that Defendants has or had a policy or practice—including, but not limited to, its kin care and regular, reliable attendance policies—that effectively punishes and/or disciplines Plaintiff and other aggrieved employees who to take protected sick leave for the reasons enunciated within California and local laws (including, without limitation, Labor Code §§ 233–234, 245–249). Plaintiff is further informed and believes, and based thereon alleges, that Defendants did not provide Plaintiff and other aggrieved employees sick pay at the proper regular rate of pay as required under California law due to failure to properly calculate the regular rate, as noted above. As such, Defendants are liable for all civil penalties available under the Labor Code for such violations; including, but not limited to, Labor Code §§ 233–234, 245–249, 558, and 2698, *et seq.*

v. Defendants Violated and Continue to Violate Labor Code § 204.

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Due to Defendants’ failure to pay Plaintiff and the aggrieved employees for all hours worked and overtime, as noted above, Defendants failed to timely pay the aggrieved employees within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

vi. Defendants Violated and Continue to Violate Labor Code §§ 201-203.

As a result of Defendants’ failure to pay wages to Plaintiff and the aggrieved employees for overtime and all hours worked, Defendants violated Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th

487,492.

Due to Defendants' faulty policies described above, all aggrieved employees whose employment with Defendants concluded were not compensated at the appropriate rate. Additionally, Defendants have failed to pay all aggrieved employees for all hours worked and overtime, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

vii. Defendants Violated and Continue to Violate of Labor Code §§ 226(a) and 226.3.

Defendants failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...;
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to Defendants' various violations noted above, Defendants failed to provide Plaintiff and the aggrieved employees itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; all paid sick leave available; and other such information as required by Labor Code section 226, subdivision (a) and/or Labor Code

section 246, subdivision (i).

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).²

viii. Defendants Violated and Continue to Violate Labor Code §§ 2800, 2802.

Pursuant to Labor Code § 2800, an employer shall indemnify employee losses caused by the employer’s want of ordinary care. Accordingly, Labor Code § 2802 provides that an employer shall indemnify his/her employee for all necessary expenditures or losses incurred by the employees as a result of employment. Further, an employer shall not collect or receive from an employee any part of wages theretofore paid by employer to employee. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 (“The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating

² *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7-9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

expenses on to the employee.”) After all, the purpose of 2802 is to “prevent employers from passing along their operating expenses onto their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, (2007) 42 Cal. 4th 554, 562.

Plaintiff is informed and believes, and based thereon alleges that Defendants also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Plaintiff and other aggrieved employees, with their costs incurred for driving personal vehicles (i.e., mileage and gas); purchasing uniforms; setting up and providing everything for their home office, including but not limited to high-speed Internet service, desk, chair, and other home office supplies; providing uniform and other deposits; separately laundering mandatory uniforms, for the purchase of tools and safety equipment; and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. Plaintiff asserts that Defendants knew and had reason to know that employees were paying for work related activities without reimbursement in violation of Labor Code §§ 2800 and 2802.

viii. Defendants Violated and Continue to Violate Labor Code § 1174.

Labor Code § 1174(d) states “[e]very person employing labor in this state shall keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece-rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by commission, but in case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” Defendants have a policy and/or practice of intentionally and willfully failing to maintain accurate payroll records properly showing all the statutorily required information for Plaintiff and other aggrieved employees due to the various Labor Code violations noted above. As a result, Pacific Bell has violated Labor Code § 1174.

ix. Defendants’ Other Labor Code Violations.

Finally, as California’s Supreme Court has noted, “the Legislature,” in enacting PAGA, “conferred fairly broad standing on all plaintiffs who were employed by the violator

and subjected to at least one alleged violation.” *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 91 (2020). Moreover, even the fact that a particular PAGA Plaintiff’s “individual claim may be time-barred does not nullify the alleged Labor Code violations nor strip [them] of [their] standing to pursue PAGA remedies.” *Johnson v. Maxim Healthcare Servs., Inc.*, 66 Cal. App. 5th 924, 930 (2021). Plaintiff thus, as an aggrieved employee, has standing and intends, on behalf of the LWDA, to pursue civil penalties against Defendants for any and all other Labor Code violations committed by Defendants—including, but not limited, those the Plaintiff did not suffer directly, and those the Plaintiff suffered outside of the applicable statute of limitations.

x. Attorneys’ Fees, Costs, Interest, Liquidated Damages, And Penalties.

Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 248.5, 558, 1194, 1194.2, 1197.1, and 2699, *et seq.*, among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs. Pursuant to Labor Code section 2699, *et seq.*, an aggrieved employee is entitled to 25% of the penalty assessment, which is \$100 for the first violation and \$200 for each subsequent violation, and 100% of the underpaid wages. Accordingly, Defendants are liable for these items in addition to the unpaid wages. Plaintiff has already incurred actual damages, costs and attorney’s fees and will continue to incur costs as a result of Defendants’ unlawful actions. Plaintiff will pursue all available remedies, including those provided by PAGA, for these violations on behalf of herself and other aggrieved employees.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above.

Respectfully submitted,

Jim Treglio

Jim Treglio
POTTER HANDY, LLP