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Attorneys for Plaintiff TERESA R. FLEMING,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

TERESA R. FLEMING, on behalf of herself
and other aggrieved employees,

Plaintiff,

vs.

VISUAL DATA MEDIA SERVICES, LLC; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV34558**

PAGA ACTION

**PLAINTIFF TERESA R. FLEMING'S
COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff TERESA R. FLEMING ("Plaintiff"), who alleges and complains
against Defendants VISUAL DATA MEDIA SERVICES, LLC; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
hours worked at minimum wage and all overtime hours worked at the overtime rate of pay;

1 indemnification for all necessary expenditures or losses incurred by employees in direct
2 consequence of discharging their duties; statutory penalties for failure to timely pay earned wages
3 during employment; statutory penalties for failure to provide accurate wage statements; statutory
4 waiting time penalties in the form of continuation wages for failure to timely pay employees all
5 wages due upon separation of employment. Plaintiff seeks on a representative basis, following
6 notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys'
7 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
8 of California, and others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to Los Angeles County, at 610 N. Hollywood Way, Burbank,
18 CA 91505.

19 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
20 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
21 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
22 tolled from April 6, 2020, until October 1, 2020.

23 **III. PARTIES**

24 1. Plaintiff brings this action as a representative of the Labor and Workforce
25 Development Agency on behalf of herself and other current and former employees subject to
26 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
27 filed include current, former and/or future employees of Defendants who work, worked, or will
28 work for Defendants as direct employees as well as temporary employees employed through temp

1 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
2 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
3 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
4 around September 2021, until on or about December 17, 2021.

5 2. Plaintiff is informed and believes and thereon alleges that Defendant VISUAL
6 DATA MEDIA SERVICES, LLC is authorized to do business within the State of California and is
7 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
8 relevant hereto were persons acting on behalf of Defendant VISUAL DATA MEDIA SERVICES,
9 LLC in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
10 or policies. Defendant VISUAL DATA MEDIA SERVICES, LLC operates in Los Angeles
11 County and employed Plaintiff and putative class members in Los Angeles County, including but
12 not limited to, at 610 N. Hollywood Way, Burbank, CA 91505,

13 3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
14 through 50 are corporations, or are other business entities or organizations of a nature unknown to
15 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
16 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
17 working conditions of employment of Plaintiff and aggrieved employees.

18 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
19 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
20 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
21 supervisor, independent contractor and/or employee of each defendant who violated or caused to
22 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
23 the Industrial Welfare Commission's wage orders regulating hours and days of work.

24 5. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
25 sues said defendants by said fictitious names, and will amend this complaint when the true names
26 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
27 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
28 named defendants is in some manner responsible for the events and allegations set forth in this

1 complaint.

2 6. Plaintiff makes the allegations in this complaint without any admission that, as to
3 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
4 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

7 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

8 **(Against all Defendants by Plaintiff)**

9 7. Plaintiff incorporates all paragraphs above as though fully set forth herein.

10 8. During the period beginning one (1) year preceding Plaintiff sending the initial
11 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
12 202, 203, 204, 226, 510, 1194, 1197, 2802, and Sections 14 and 15 of the applicable Wage Orders.

13 9. Specifically, Defendants have committed the following violations of California
14 Labor Code:

15 10. **Failure to pay wages for all hours worked at the legal minimum wage:**
16 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
17 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
18 which includes all time that an employee is under control of the employer and all time the
19 employee is suffered and permitted to work. This includes the time an employee spends, either
20 directly or indirectly, performing services which inure to the benefit of the employer.

21 11. Labor Code sections 1194 and 1197 require an employer to compensate employees
22 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
23 Wage Orders.

24 12. In this case, Plaintiff and other current and former aggrieved California-based
25 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
26 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
28 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but

not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who worked remotely to spend time setting up their work from home computer workstations with computer equipment provided by Defendants without being paid for this time; and

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees who work remotely to undergo a multi-step off-the-clock VPN log in procedure before being able to clock in for the start of their shift without being paid for this time. The log in procedure took a minimum of 7 to 10 minutes daily in which the following task was performed off-the-clock:

- i. Turn on or wake up the laptop computer provided by Defendants;
- ii. Sign into personal Wi-Fi to connect to the internet;
- iii. Launch a “VPN” application and wait for it to load;
- iv. Once loaded, log into the “VPN” application;
- v. Wait additional time to load after entering log in credentials into “VPN” application;
- vi. Log in to email;
- vii. Launch the “Acentis” application
- viii. Wait additional time to load after entering log in credentials into “Acentis” application;
- ix. Finally, clock in for the start of the shift.

13. Therefore, Defendants suffered, permitted, and required Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’ control without paying wages for that time. This resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees working time for which they were not compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable Wage Order.

14. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**

1 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
2 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
3 which includes all time that an employee is under control of the employer and all time the
4 employee is suffered and permitted to work. This includes the time an employee spends, either
5 directly or indirectly, performing services that inure to the benefit of the employer.’

6 15. Labor Code sections 510 and 1194 require an employer to compensate employees a
7 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
8 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

9 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
10 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
11 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
12 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
13 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
14 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
15 seventh day of a workweek shall be compensated at the rate of no less than twice the
16 regular rate of pay of an employee.

17 Labor Code section 510.

18 16. In this case, Defendants failed to pay Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
20 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

21 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees who worked remotely to spend time setting up their work from home
23 computer workstations stations with computer equipment provided by Defendants without being
24 paid for this time; and

25 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
26 non-exempt employees who work remotely to undergo a multi-step off-the-clock VPN log in
27 procedure before being able to clock in for the start of their shift without being paid for this time.
28 The log in procedure took a minimum of 7 to 10 minutes daily in which the following task was
performed off-the-clock:

- i. Turn on or wake up the laptop computer provided by Defendants;
- ii. Sign into personal Wi-Fi to connect to the internet;

- iii. Launch a “VPN” application and wait for it to load;
- iv. Once loaded, log into the “VPN” application;
- v. Wait additional time to load after entering log in credentials into “VPN” application;
- vi. Log in to email;
- vii. Launch the “Acentis” application
- viii. Wait additional time to load after entering log in credentials into “Acentis” application;
- ix. Finally, clock in for the start of the shift.

17. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

18. Failure to Indemnify for Losses and Expenditures Incurred as Part of Employment: California law requires that every employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

19. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff and other current and former aggrieved California-based non-exempt hourly employees’ necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants employed policies, practices, and/or procedures of impermissibly passing business-related expenses to Plaintiff and similarly situated employees who worked remotely. These policies,

1 practices, and/or procedures included, but were not limited to:

2 (a) Requiring Plaintiff and other current and former aggrieved California-based non-
3 exempt hourly employees' who work remotely to use or purchase their own tools and/or resources
4 in order to work for Defendants, including but not limited to their internet for work-related
5 purposes - without reimbursing Plaintiff and other current and former aggrieved California-based
6 non-exempt hourly employees' for such use.

7 20. Moreover, Defendants employed policies and procedures which ensured Plaintiff
8 and aggrieved employees would not receive indemnification for their employment related
9 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
10 indemnification in compliance with California law.

11 21. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
12 employment related expenses, including but not limited to costs related to use of their personal
13 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

14 22. **Failure to timely pay earned wages during employment:** In California, wages
15 must be paid at least twice during each calendar month on days designated in advance by the
16 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
17 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
18 16th and the 26th day of that month and wages earned between the 16th and the last day,
19 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
20 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
21 paid within seven (7) calendar days following the close of the payroll period in which wages were
22 earned. Labor Code section 204(d).

23 23. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
24 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
25 exempt employees' earned wages (including minimum wages, overtime wages), in violation of
26 Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures
27 resulted in their failure to pay Plaintiff's and other current and former aggrieved California-based
28 hourly non-exempt employees' their earned wages within the applicable time frames outlined in

1 Labor Code section 204.

2 **24. Failure to provide complete and accurate wage statements:** Labor Code section
3 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
4 employee his or her wages, the employer must “furnish each of his or her employees ... an
5 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
6 employee, except for any employee whose compensation is solely based on a salary and who is
7 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
8 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
9 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
10 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
11 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
12 name of the employee and his or her social security number, (8) the name and address of the legal
13 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the employee.”

15 **25.** As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
16 and other current and former aggrieved California-based hourly non-exempt employees all wages
17 earned (including minimum wages, overtime wages) rendered Plaintiff’s and other current and
18 former aggrieved California-based hourly non-exempt employees’ wage statements inaccurate, in
19 violation of Labor Code section 226.

20 **26. Failure to pay employees all wages due at time of termination/resignation:** An
21 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
22 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
23 hours of resignation (Labor Code section 202).

24 **27.** As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
26 all their earned wages (including minimum wages, overtime wages) Defendants failed to pay those
27 employees timely after each employee’s termination and/or resignation, in violation of Labor
28 Code sections 201, 202, and 203.

1 28. Defendants' violations of Wage Order 4 constituted violations of Labor Code
2 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

3 29. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
4 employee, on behalf of himself or herself and other current or former employees, to bring a civil
5 action to recover civil penalties against all Defendants pursuant to the procedures specified in
6 Labor Code section 2699.3.

7 30. Plaintiff has complied with the procedures for bringing suit specified in Labor
8 Code section 2699.3. On June 14, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
9 provided notice to Defendants by certified mail which provided notice of the specific provisions of
10 the Labor Code alleged to have been violated, including the facts and theories to support the
11 violations alleged.

12 31. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
13 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
14 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
15 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
16 to investigate Plaintiff's claims.

17 32. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
18 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 510, 1194,
19 1197, 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to
20 the LWDA to the present, in the following amounts:

21 a. For violations of Labor Code sections 201, 202, 203, 204, 226, 510, 1194,
22 1197, 2802, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
23 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
24 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

25 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
26 for each employee for each pay period for the initial violation, and for each subsequent violation,
27 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
28 established by Labor Code section 226.3].

1 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
2 employee for each pay period for the initial violation, and for each subsequent violation, one
3 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
4 established by Labor Code section 558] and any unpaid wages.

5 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
6 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
7 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
8 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

9 33. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
10 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
13 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

14 **ON THE FIRST CAUSE OF ACTION:**

15 1. That Defendants be found to have violated the provisions of the Labor Code and
16 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

17 2. For any and all legally applicable penalties during the relevant statute of limitations
18 subject to any permissible tolling, including but not limited to those recoverable under the
19 California Labor Code, including but not limited to section 2699(f);

20 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
21 under California Labor Code section 2699(g); and

22 4. For such and other further relief, in law and/or equity, as the Court deems just or
23 appropriate

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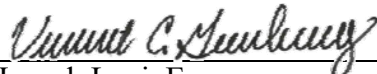
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1 Dated: October 28, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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3 By: 
4 Joseph Lavi, Esq.
5 Vincent C. Granberry, Esq.
6 Danielle E. Montero, Esq.
7 Attorneys for Plaintiff
8 TERESA R. FLEMING,
9 on behalf of herself and current and former
10 aggrieved employees
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