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on behalf of herself and all others similarly situated

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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Amando Villasenor, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KIMBERLY PELLETIER, an individual, on
behalf of the State of California and all
similarly-aggrieved employees,

Plaintiff,

vs.

ABC LEGAL SERVICES, LLC, a
Washington corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 37-2022-00047743-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, LABOR CODE SECTIONS 2699,
ET SEQ.**

DEMAND FOR JURY TRIAL

1 KIMBERLY PELLETIER, an individual (“Ms. Pelletier,” or “Plaintiff”), on behalf of the
2 State of California and all similarly-aggrieved employees, brings this representative action against
3 Defendants ABC LEGAL SERVICES, LLC, a Washington limited liability company (“ABC Legal,”
4 or “Defendant”), and DOES 1 through 100, inclusive, and alleges on information and belief as
5 follows:

6 **INTRODUCTION**

7 1. ABC Legal provides litigation-related services to law firms including service of
8 process, e-filing, skip tracing, and venue selection. It touts itself as “the national leader in service
9 of process.” <https://www.abcllegal.com/>. ABC Legal also advertises that it provides prompt,
10 professional service of process so its clients “know [their] documents are in good hands [because
11 ABC Legal’s] licensed process servers are paid more and aspire to a higher standard.”
12 <https://www.abcllegal.com/service-of-process>.

13 2. To carry out the litigation-related service obligations owed to its customers, ABC
14 Legal obtains the services of “Process Servers” like Plaintiff and the similarly-aggrieved employees
15 she seeks to represent. Under the management and control of ABC Legal, these Process Servers
16 carry out necessary litigation-related services for ABC Legal’s third-party customers. Despite
17 Process Servers’ central role in ABC Legal’s business and the control exerted over Process Servers,
18 ABC Legal uniformly misclassifies its Process Servers as “independent contractors.”

19 3. By refusing to recognize Process Servers as employees, ABC Legal cheats these
20 individuals out of protections provided by California law such as minimum wages, overtime pay,
21 and reimbursement of business expenses. In addition to denying these workers core benefits, ABC
22 Legal’s misclassification also robs the State of important employee tax revenue and gives ABC
23 Legal an undue advantage over law-abiding competitors who bear the necessary expense associated
24 with employing similar workers.

25 4. This Representative Action seeks civil penalties under the California Private
26 Attorneys General Act (“PAGA”) for violations of California’s Labor Code on behalf of Plaintiff,
27 the State of California, and all similarly-aggrieved employees in California.
28

1 **JURISDICTION & VENUE**

2 5. This Court has subject matter jurisdiction to hear this case because the civil penalties
3 sought herein resulting from Defendant's conduct exceeds the jurisdictional minimum of this Court.

4 6. Venue is proper pursuant to Code of Civil Procedure, sections 395 and 395.5, among
5 other sections. The wrongful conduct and liability complained of in this Complaint arose, at least in
6 part, in this County as some of the transactions that are the subject of this lawsuit occurred here and
7 Defendant has conducted and continues to conduct business in this County. Specifically, Defendant
8 employs aggrieved Process Server employees in this County and fails to comply with the Labor
9 Code and Wage Orders relating to those same workers.

10 **PARTIES**

11 7. Ms. Pelletier is and at all relevant times was a resident of California. She currently
12 works as a Process Server for Defendant.

13 8. ABC Legal Services, LLC is a Washington limited liability company with a principal
14 business address at 633 Yesler Way, Seattle, WA 98104.

15 9. Plaintiff does not know the true names and/or capacities, whether individual, partners,
16 or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
17 said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the
18 true names and capacities of these Defendants have been ascertained. Plaintiff is informed and
19 believes and thereon alleges that these Defendants are responsible in whole or in part for Plaintiff's
20 alleged damages.

21 10. At all times mentioned, Defendants were the agents, alter egos, servants, joint
22 venturers, joint employers, or employees for each other. Defendants acted with the consent of the
23 other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or
24 employment. All conduct was ratified by Defendants, and each of them.

25 **GENERAL ALLEGATIONS**

26 **A. ABC Legal's Business Model**

27 11. ABC Legal operates a litigation-related services business. The litigation-related
28 services it offers to law firms includes service of process, e-filing, skip tracing, and venue selection.

1 ABC Legal holds itself out to the public as “the national leader in service of process.”
2 <https://www.abcllegal.com/>. Further, ABC Legal advertises that it provides prompt, professional
3 service of process so its client “know [their] documents are in good hands [because ABC Legal’s]
4 licensed process servers are paid more and aspire to a higher standard.”
5 <https://www.abcllegal.com/service-of-process>.

6 12. ABC Legal holds out to the public that it does “just one thing: file and serve
7 lawsuits.” <https://www.abcllegal.com/>. ABC Legal states it files and serves around 125,000 lawsuits
8 every month. *Id.* This includes “carry[ing] paper documents the last mile and ring[ing] people’s
9 doors to deliver them.” *Id.* In order to carry out these services, ABC Legal obtains the labor of
10 Process Servers like Plaintiff and the similarly-aggrieved employees she seeks to represent. Process
11 Servers are paid for resolutions of service of process and not for attempts of service.
12 <https://www.abcllegal.com/partnerresources/reassigning-work>.

13 13. Needing to satisfy its customers and provide the services they want, ABC Legal
14 retains and exercises a great deal of control over its Process Server workforce. This includes control
15 and rigid standards regarding Process Servers’ timing of their work, steps required to complete
16 service jobs, and the like.

17 **B. ABC Legal Misclassifies Process Servers**

18 14. Integral to ABC Legal’s litigation-related services business, ABC Legal utilizes the
19 labor of Process Servers, like Plaintiff and the similarly-aggrieved employees she seeks to represent,
20 to file and serve lawsuits for ABC Legal’s third-party customers. ABC Legal labels Process Servers
21 as “independent contractors.” In short, these Process Servers perform a central part of ABC Legal’s
22 litigation-related services business: the carrying and delivering of legal documents on behalf of ABC
23 Legal customers. The work of Process Servers is necessary to ABC Legal’s litigation-related
24 services business and is continuously performed for ABC Legal. Further, ABC Legal holds itself out
25 as “the national leader in service of process.” Process Servers are naturally an essential component
26 of ABC Legal’s business model.

1 15. ABC Legal strictly controls and regulates its Process Servers in connection with the
2 performance of their service of process duties, both in contract and in fact. This control and direction
3 includes, but is not limited to, the following:

- 4 a. ABC Legal sets forth rigid standards regarding Process Servers' timing of their work,
5 steps required to complete service jobs, and the like.
- 6 b. ABC Legal plans routes for its Process Servers.
- 7 c. ABC Legal requires its Process Servers to undergo internal training.
- 8 d. ABC Legal requires its Process Servers to abide by any requirements set forth by its
9 customers.
- 10 e. ABC Legal requires its Process Servers to make attempts on each job within 48 hours
11 of receipt and within every 48 hours after. Process Servers must submit their services
12 and attempts via the ABC Mobile application at the service location with the device's
13 GPS turned on, immediately following the service or attempt, and a photo with each
14 submission.
- 15 f. ABC Legal requires its Process Servers to operate with "due diligence." This includes
16 making extra notes on every service attempt and selecting all the appropriate options.
17 It also includes trying their best to determine whether an address is servable and
18 communicating that to the courts and customers via their proof.
- 19 g. ABC Legal requires every new Process Server to undergo an initial review when they
20 begin contracting with ABC Legal. During this time, a guide is in contact with the
21 Process Server, and each service entered will be reviewed to ensure adherence to its
22 regulations and the expectations of its customers.
- 23 h. ABC Legal keeps a "scorecard" on its Process Servers which ranks Process Servers
24 against one another based on their performance.
- 25 i. ABC Legal reduces the work its provides to a Process Server, or provides no work at
26 all, where the Process Server has too many overdue jobs, expired credentials, poor
27 performance, and/or a lull of work in their area.

- j. ABC Legal states it does not have an official dress code, but expects Process Servers to dress at least business-casual.
- k. ABC Legal requires its Process Servers to act “positively and professionally.” ABC Legal reminds Process Servers they “are representing [themselves], ABC Legal, [its] customers, and the courts, so treat everyone you meet with respect and speak honestly.”
- l. Process Servers are expected to have the rules of service of process memorized, as well as any applicable state specific rules. Process Servers must also be familiar with ABC Legal’s Expectations and ABC Legal’s Operations policies.
- m. Anytime a Process Server will not be serving for ABC Legal for 3 or more days, Process Servers must turn off the “Auto Dispatch” feature in the ABC Mobile application so that they will not receive work in their assigned area.
- n. In order for a job to be reassigned, Process Servers must send a request to ABC Legal and provide an explanation for the request.
- o. ABC Legal requires its Process Servers to agree to an onerous covenant not to compete.
16. ABC Legal is well aware of its misclassification of its Process Servers. It has already litigated prior misclassification cases and paid millions of dollars to settle them.
17. Furthermore, in 2019, ABC Legal advised its Process servers, including Plaintiff, that they would be reclassified as employees in light of California law requiring this. However, no such change ever occurred and ABC Legal continues to operate using “independent contractors” to fulfil this central process serving role in their company.

C. ABC Legal’s Wage and Hour Violations

18. By refusing to recognize its Process Servers as employees, ABC Legal cheats these individuals out of protections provided by California law such as minimum wages, overtime pay, and reimbursement of business expenses. For example, as addressed above, Process Servers are paid for resolutions of service, not service attempts. Therefore, if a job cannot be completed, the Process Server receives no pay despite working hours for ABC Legal. California law requires compensation

1 for *each* hour of work, and one cannot borrow wages from other hours worked to achieve the State's
2 minimum.

3 19. Additionally, no overtime is paid for work over 8 hours in a day or 40 hours in a week
4 despite process servers, including Plaintiff, routinely working such hours.

5 20. Among other expenses, process servers need to use their own vehicle, cell phone,
6 printer, and other equipment to complete their work. Yet they receive no reimbursement for mileage,
7 data, or other automobile and cell phone-related expenses. Further, Process Servers receive
8 reimbursement for printing by the page, but receive no reimbursement for the printer itself, ink, or
9 other related necessary expenses.

10 21. As a further result of its misclassification of Process Servers, ABC Legal fails to
11 provide these individuals with accurate itemized wage statements showing earnings, hours worked,
12 pay rates, and the like.

13 22. ABC Legal also has no policies for providing breaks and, as a result, Process Servers
14 like Plaintiff often do not take timely meal or rest breaks, nor are they compensated during their rest
15 breaks as requested under California law.

16 23. Furthermore, given its underpayment of wages as stated above, ABC Legal fails to
17 pay all wages due upon termination for former employees under Labor Code Section 203.

18 24. By misclassifying Plaintiff and Process Servers as independent contractors,
19 Defendant seeks to avoid various duties and obligations owed to employees under California's Labor
20 Code and Industrial Welfare Commission ("IWC") Wage Orders, including: the duty to indemnify
21 employees for all expenses and losses necessarily incurred in connection with their employment
22 (Cal. Labor Code §2802; IWC wage order No. 1, §§ 8-9); the duty to provide off-duty meal periods
23 (Cal. Labor Code §§ 512, 226.7; IWC wage order No. 1, § 11); the duty to authorize and permit paid
24 rest periods (Cal. Labor Code §§ 226.7, 1194; IWC wage order No. 1, § 12); the duty to pay all
25 wages due (Cal. Labor Code §§ 201-203); the duty to furnish accurate wage statements (Cal. Labor
26 Code §§ 226, 226.3); the duty to pay overtime premium pay under California state law (Cal. Labor
27 Code § 510, IWC wage order No. 1), and other legal obligations.

25. Plaintiff challenges Defendant's policy of willfully and unlawfully misclassifying Process Servers as "independent contractors" and thereby refusing to indemnify them for employment-related expenses and losses, coercing them to purchase necessary services and items, failing to provide off-duty meal periods, failing to authorize and permit paid rest periods, failing to pay all wages due, failing to document actual hours worked (among other things) on pay statements as required by California law, and failing to pay state and federal overtime premium pay.

FIRST CAUSE OF ACTION

(Against All Defendants)

Civil Penalties Under the California Private Attorneys General Act ("PAGA")

26. Plaintiff incorporates by reference every allegation contained above.

27. Plaintiff is an aggrieved employee under PAGA. She worked for Defendant over the last year and Defendant failed to comply with the above-described Labor Code and Wage Order requirements during the course of her employment.

28. PAGA permits aggrieved employees, like Plaintiff, to recover civil penalties for violations of numerous Labor Code sections on behalf of the State of California. (*See* Lab. Code, § 2699.5.) Plaintiff seeks to recover penalties for Labor Code violations occurring to all other individuals who performed litigation-related services for Defendant in California within the relevant PAGA recovery period (i.e. within one year and 65 days from the filing of this Complaint plus any relevant tolling periods).

29. Defendant's conduct, as alleged above, violates numerous sections of the California Labor Code, including but not limited to, the following:

- a. Labor Code sections 201, 202, 203, and 204, for failure to timely pay Plaintiff and other similarly-aggrieved employees all earned wages;
- b. Labor Code section 226.8 for willful misclassification of Process Servers as "independent contractors;"
- c. Labor Code sections 1194 and 1197, for failure to pay Plaintiff and other similarly-aggrieved employees all earned wages;
- d. Labor Code sections 510 and 1198, for failure to compensate Plaintiff and other similarly-aggrieved employees with all required overtime pay;

- e. Labor Code sections 226.7 and 512, for failure to provide all required meal and rest breaks to Plaintiff and other similarly-aggrieved employees;
- f. Labor Code section 2802, for failing to reimburse or indemnify expenses or losses incurred as a result of Plaintiff and other similarly-aggrieved employees performing work duties;
- g. Labor Code sections 226, 226.3 for failure to provide accurate wage statements to Plaintiffs and other similarly-aggrieved employees; and
- h. Labor Code sections 226, 226.2, 1174, 1174.5, and 1174, for failure to maintain accurate employment records related to Plaintiff and other similarly-aggrieved employees' work.

30. Plaintiff has complied with all administrative requirements and pre-conditions contained within Labor Code section 2699.3. Plaintiff's counsel electronically submitted the Initial PAGA Notice on September 21, 2022, to the Labor and Workforce Development Agency ("LWDA"). A copy of the notice was also provided to Defendant. The required 60-day period passed without any notice from the LWDA stating an intention to investigate the claims provided in the notice.

31. Pursuant to PAGA, and, in particular, California Labor Code sections 2699, 2699.3, and 2699.5, Plaintiff is entitled to and hereby seeks to recover civil penalties against Defendant, in addition to reasonable attorney fees and costs, on behalf of herself, the State, and all other similarly-aggrieved current and former aggrieved employees for violation of the Labor Code sections referenced in this Complaint.

32. DOES 1-100 may be held personally liable for civil penalties under PAGA as owners, executives, and agents if they violated or caused to be violated any of the Labor Code sections identified above.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendant, as follows:

1. For civil penalties according to proof;
2. For costs of suit;

- 1 3. For reasonable attorneys' fees; and
2 4. For such other and further relief as this Court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff demands a trial by jury.

5
6 Respectfully submitted:
7 Dated: November 28, 2022

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