

FILED
Superior Court Of California,
Sacramento
10/14/2022
v. Hixson
By _____, Deputy
Case Number:
34-2022-00328422

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7 **SUPERIOR COURT OF CALIFORNIA**
8 **FOR THE COUNTY OF SACRAMENTO**

9	MARJAN WARMILEE, individually and	)	CLASS ACTION
10	on behalf of all others similarly situated,	)	
11		)	COMPLAINT FOR DAMAGES:
12	Plaintiff,	)	1. Failure to Pay Minimum Wage for All
13		)	Hours Worked;
14	vs.	)	2. Failure to Provide Meal and Rest
15		)	Periods;
16	LENDBUZZ FUNDING, LLC;	)	3. Failure to Provide Accurate Wage
17	LENDBUZZ INC.; DOES 1 to 20,	)	Statements;
18	inclusive.	)	4. Waiting Time Penalties;
19		)	5. Failure to Pay Overtime Wages;
20	Defendants	)	6. Unfair Competition (Business &
21		)	Professions Code § 17200 <i>et seq.</i>);
22		)	7. Civil Penalties Pursuant to Private
23		)	Attorney General Act, Labor Code §
24		)	2698 <i>et seq.</i> ;
25		)	8. Failure to Reimburse Business
26		)	Expenses.
27		)	
28		)	

JURY TRIAL DEMANDED BY FAX

1 Plaintiff MARJAN WARMILEE ("Plaintiff") hereby files this Complaint against Defendants
2 LENDBUZZ FUDING, LLC; LENDBUZZ INC; and DOES 1 to 20, inclusive, (hereinafter
3 collectively referred to as "Defendants"). Plaintiff alleges as follows:

4 **INTRODUCTION**

5 1. This is a class and representative action brought by Plaintiff on behalf of herself and
6 other similarly situated employees of Defendants. Plaintiff, who has worked for Defendants as
7 Credit Analyst/ Loan Officer, brings this class and representative lawsuit against Defendants on
8 behalf of herself and all others similarly situated to recover wages and other damages from
9 Defendants due to her misclassification as an exempt employee. Plaintiff seeks these damages and
10 applicable penalties, plus interest and attorney's fees, on behalf of herself and similarly situated
11 employees.

12 2. Defendants provide automobile loans via an online application and approval process.
13 In order to successfully compete against other auto lenders, LendBuzz substantially reduced its labor
14 costs by placing the burden of overtime work on a number of salaried employees that it classified as
15 exempt from overtime wages and other related benefits. The goal of overtime laws includes
16 expanding employment throughout the workforce by putting financial pressure on the employer and
17 nurturing a stout job market, as well as the important public policy goal of protecting employees in a
18 relatively weak bargaining position against the unfair scheme of uncompensated overtime work. An
19 employer's obligation to pay its employees wages is more than a matter of private concern between
20 the parties. That obligation is founded on a compelling public policy judgment that employees are
21 entitled to work a livable number of hours at a livable wage. In addition, statutes and regulations that
22 compel employers to pay overtime relate to fundamental issues of social welfare worthy of
23 protection. The requirement to pay overtime wages extends beyond the benefits individual workers
24 receive because overtime wages discourage employers from concentrating work in a few
25 overburdened hands and encourage employers to instead hire additional employees. Especially in
26 today's economic climate, the importance of spreading available work to reduce unemployment
27 cannot be overestimated.
28

PARTIES AND JURISDICTION

3. Plaintiff is an employee of Defendants, where she worked as a Credit Analyst/ Loan Officer from approximately April 11, 2022, through August 8, 2022.

4. At all times relevant in this Complaint, Plaintiff was over the age of eighteen and resided in the State of California.

5. Plaintiff is informed and believes, and thereon alleges, that Defendant LENDBUZZ FUNDING, LLC is a Delaware Limited Liability Company with its principal place of business in Massachusetts and is also licensed to and does conduct business in the State of California.

6. Plaintiff is informed and believes, and thereon alleges, that Defendant LENDBUZZ INC. is a company of unknown form and origin that is doing business in California.

7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or joint venturer of the remaining defendants and was acting within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants. The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sue such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive, when they have been determined.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted with deliberate indifference and conscious disregard to the rights of all employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants were at all relevant times advised by skilled California employment law attorneys and knew the requirements of the California Labor Code with respect to proper employee classification, employee wage statements, payment of minimum and overtime wages, and provision of meal and rest periods.

9. Defendants proximately caused Plaintiff and similarly situated employees to be subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

10. The Sacramento County Superior Court has jurisdiction in this matter due to alleged violations of California Labor Code §§ 203, 226, 226.7, 510, 512, 1194, Business and Professions Code § 17200 *et seq.*, and the applicable Wage Order.

11. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within Sacramento County.

12. On October 7, 2022, Plaintiff filed her Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”); the LWDA has not responded. After the expiration of 65 days from the filing of the PAGA Notice, if the LWDA does not respond, Plaintiff will have fully exhausted her administrative remedy.

CLASS ALLEGATIONS

13. Plaintiff brings this action, on behalf of herself and all others similarly situated, as a class action pursuant to California Code of Civil Procedure section 382. The classes that Plaintiff seeks to represent are composed of and defined as follows:

All Credit Analysts and Loan Officers who were employed by Defendants in California at any time four (4) years prior to the filing of this Action up to the date that this matter is certified as a class action.

14. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interest in the litigation and the proposed classes are easily ascertainable.

(a) Numerosity: The Plaintiff Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants may have employed dozens of individuals falling within the above stated class definitions throughout the State of California during the

1 applicable statute of limitations, who were subjected to the practices outlined in this
2 Complaint. As such, joinder of all members of the Plaintiff Class is not practicable.

3 (b) Common Questions Predominate: Common questions of law and fact exist as to all
4 members of the Plaintiff Class and predominate over questions that affect only
5 individual members of the class. These common questions of law and fact include,
6 without limitation, the following:

- 7 (1) Whether Defendants properly classified members of the Plaintiff Class
8 as exempt employees;
- 9 (2) Whether Defendants accurately stated all required information on
10 paystubs issued to members of the Plaintiff Class;
- 11 (3) Whether Defendants provided meal and rest periods to their employees
12 as required under the California Labor Code;
- 13 (4) Whether Defendants maintained policies and practices that provided
14 meal and rest periods to their employees as required under the
15 California Labor Code;
- 16 (5) Whether Defendants paid overtime and minimum wages to their
17 employees as required under the California Labor Code;
- 18 (6) Whether Defendants paid all wages owed to Class members at the time
19 of termination of their employment;
- 20 (7) Whether Defendants reimbursed Class members for all business
21 expenses incurred.

22 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the Plaintiff
23 Class. Plaintiff also sustained damages arising out of Defendants' common course of
24 conduct in violation of the law as complained of herein. Defendants improperly
25 classified Plaintiff as exempt, failed to pay all minimum and overtime wages owed,
26 failed to provide meal and rest periods, failed to reimburse Plaintiff for the business
27 use of her cell phone and home internet connection, and failed to pay all wages owed
28 to Plaintiff and members of the Class upon the termination of their employment with

Defendants. As a result, each putative class member will have the same basis for their legal claims.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. Plaintiff resides in California and is an adequate representative of the putative class as she has no interests that are adverse to those of absent class members. Additionally, Plaintiff has retained counsel who have substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the classes is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

15. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

BACKGROUND

16. Plaintiff was hired in April 2022 as a Credit Analyst/Loan Officer. During her employment, Defendants treated and paid Plaintiff and similarly situated employees as exempt employees.

1 17. Throughout the relevant period, Defendant misclassified Plaintiff and similarly
2 situated employees in similar roles and job titles as exempt, although Plaintiff and similarly situated
3 employees' positions did not qualify for any exemption under California or Federal law.

4 18. Nevertheless, Defendant routinely required Plaintiff and similarly situated employees
5 to work more than (8) hours per day, and/or forty (40) hours per week.

6 19. Plaintiff's duties as a Credit Analyst/Loan Officer did not require the use of
7 independent judgment and discretion and they did not meet the requirements for any exemption
8 under State or Federal law. Plaintiff and similarly situated employees were not primarily engaged in
9 exempt level duties and were not properly classified as exempt.

10 20. Consequently, Defendants willfully and deliberately misclassified Plaintiff and
11 similarly situated employees as employees who were exempt from the overtime provisions of the
12 California Labor Code and Wage Orders. However, Defendants routinely required Plaintiff and
13 similarly situated employees to work more than eight (8) hours per day, and/or forty (40) hours per
14 week without paying minimum wage or overtime for the additional hours worked.

15 21. Defendants also did not allow Plaintiff and similarly situated employees to take their
16 statutorily required meal and rest periods. Defendants failed to provide Plaintiff and other similarly
17 situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as
18 required under the law.

19 22. Plaintiff and similarly situated employees regularly missed their meal and rest periods
20 and/ or they were provided late. Defendants also failed to provide rest periods to Plaintiff and
21 similarly situated employees for every 4 hours worked or major fraction thereof. Defendants'
22 management staff were aware this was occurring and did not ensure meal and/ or rest periods were
23 provided to Plaintiff and similarly situated employees in compliance with California law.

24 23. Plaintiff and similarly situated employees were also required to use their personal cell
25 phones and home internet for work purposes but did not receive reimbursements from Defendants
26 for these reasonable and necessary expenses.
27
28

1 24. Defendants also did not provide Plaintiff and similarly situated employees legally
2 compliant wage statements noting, among other things, total hours worked, gross wages earned, the
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate, and the legal name of the employer.

5 25. Defendants also did not provide Plaintiff and similarly situated aggrieved employees
6 all wages owed upon their termination or within seventy-two (72) hours of their separation from
7 employment.

8 26. Defendants also required Plaintiff and similarly situated aggrieved employees to sign
9 an illegal contract to be employed by Defendant. Specifically, all new employees were expressly
10 required to sign an illegal non-competition agreement to be employed by Defendants. Plaintiff and
11 similarly situated employees were told in their offer letter from Defendants that the offer of
12 employment was contingent on signing this illegal Agreement.

13 27. Plaintiff is informed and believes that Defendants committed numerous other
14 violations of the California Labor Code, including but not limited to those identified in this
15 Complaint. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018),
16 Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether she
17 experienced them personally or not.

18 28. Upon information and belief, all transactions regarding compensation, hiring,
19 terminations, promotions, pay increases, etc. relating to Defendants' California employees were
20 submitted to and processed by Defendant in its corporate headquarters. Additionally, on information
21 and belief, Defendants' corporate records, in particular HR and pay records pertaining to
22 Defendants' California employees, are also maintained at Defendants' corporate headquarters.

23 29. Upon information and belief, Defendants maintain a central Payroll department at its
24 corporate headquarters which processes payroll for all Defendants' employees, including Plaintiff
25 and similarly situated, aggrieved employees.

26 30. At all times herein set forth, PAGA provides that any provision of law under the
27 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
28

1 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order
2 may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
3 themselves and other current or former employees pursuant to procedures outlined in California
4 Labor Code section 2699.3.

5 31. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person
6 who was employed by the alleged violator and against whom one or more of the alleged violations
7 was committed.”

8 32. Plaintiff and other current and former employees of Defendants are aggrieved
9 employees as defined by the Labor Code in that they are all Defendants’ current or former
10 employees and one or more of the alleged violations was committed against them.

11
12 **FIRST CAUSE OF ACTION**
13 **(Failure to Pay Minimum Wage for All Hours Worked)**

14 33. Plaintiff hereby incorporates by reference Paragraphs 1 through 32 of this Complaint
15 as if fully set forth herein and for a cause of action alleges as follows:

16 34. Defendants were required to compensate Plaintiff and similarly situated employees
17 with at least the State’s minimum wage for all hours worked. See Cal. Labor Code § 1194; MW
18 Order-2014; MW Order-2017.

19 35. Defendants were aware of their obligation to pay the minimum wage but failed to do
20 so.

21 36. Defendants’ conduct described herein violates California Labor Code section 1194,
22 and applicable Wage Orders. As a proximate result of Defendants’ conduct, Plaintiff and similarly
23 situated employees have been damaged and deprived of minimum wages, in an amount to be
24 established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California
25 Labor Code section 1194.2, attorney’s fees and costs, and interest pursuant to California Labor Code
26 section 1194.

SECOND CAUSE OF ACTION
Failure to Provide Meal and Rest Periods

37. Plaintiff incorporates by reference and re-allege paragraphs 1 through 36 as though fully set forth herein.

38. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

39. Labor Code section 510 and Wage Order 5-2001, section 11(A) require an employer to provide a meal period of not less than thirty (30) minutes for each work period of more than five (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must provide a second meal period.

40. Labor Code section 510 and Wage Order 5-2001 section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

41. Plaintiff alleges that Defendants failed to provide Plaintiff and members of the Plaintiff Class with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff and Class Members worked more than five (5) hours in a day, or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff and Class Members worked more than ten (10) hours in a day.

42. Plaintiff further allege that Defendants failed to provide rest breaks of at least ten (10) minutes for each work period that they worked more than four (4) hours. On the occasions on which Defendants did pay a missed meal or rest period premium, they failed to pay the premium at the regular rate of compensation, as required under the Labor Code, by failing to incorporate into the premium payment all forms of nondiscretionary compensation.

43. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiff and members of the Plaintiff Class are entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period not provided, as a wage, from three (3) years of the

1 filing of this action, in an amount to be established at trial. See Labor Code § 226.7 and Wage Order
2 5-2001 §§ 11(B), 12(B).

3
4 **THIRD CAUSE OF ACTION**
5 **Failure to Provide Accurate Wage Statements**

6 44. Plaintiff incorporates by reference and re-allege paragraphs 1 through 43 as though
7 fully set forth herein.

8 45. According to Labor Code section 226(a), an employer must provide an itemized
9 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

10 *(1) gross wages earned, (2) total hours worked by the employee,*
11 *except for any employee whose compensation is solely based on a*
12 *salary and who is exempt from payment of overtime under*
13 *subdivision (a) of Section 515 or any applicable order of the*
14 *Industrial Welfare Commission, (3) the number of piece-rate units*
15 *earned and any applicable piece rate if the employee is paid on a*
16 *piece-rate basis, (4) all deductions, provided that all deductions*
17 *made on written orders of the employee may be aggregated and*
18 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
19 *the period for which the employee is paid, (7) the name of the*
20 *employee and the last four digits of his or her social security*
21 *number or an employee identification number other than a social*
22 *security number, (8) the name and address of the legal entity that*
23 *is the employer and, if the employer is a farm labor contractor, as*
24 *defined in subdivision (b) of Section 1682, the name and address of*
the legal entity that secured the services of the employer, and (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. The deductions made from payment of wages shall be
recorded in ink or other indelible form, properly dated, showing
the month, day, and year, and a copy of the statement and the
record of the deductions shall be kept on file by the employer for at
least three years at the place of employment or at a central
location within the State of California.

25 46. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
26 itemized statement or failed to provide an accurate and complete itemized statement showing the
27 requirements set forth in Labor Code section 226(a). Defendants also failed to list on the wage
28 statements provided to Plaintiff and similarly situated employees all hours worked.

1 worked. Such conduct shows Defendants' knowledge of their obligation to pay all wages owed
2 upon termination and willful refusal.

3 55. As a proximate result of the Defendants' conduct, Plaintiff and members of the
4 Plaintiff Class have been damaged and deprived of their wages and thereby seek their daily rate of
5 pay multiplied by thirty (30) days for Defendants' failure to pay all wages due in an amount to be
6 established at trial.

7
8 **FIFTH CAUSE OF ACTION**
Failure to Pay Overtime Wages

9 56. Plaintiff incorporates by reference and re-allege paragraphs 1 through 55 as though
10 fully set forth herein.

11 57. During the period Plaintiff was employed by Defendants, Defendants were required
12 to compensate her one and one-half (1½) times the regular rate of pay for hours worked in excess of
13 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
14 hours worked in excess of twelve (12) hours per day. See California Labor Code §§ 510, 1194.
15 Although Plaintiff and members of the Plaintiff Class regularly worked in excess of eight (8) hours a
16 day and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed.

17 58. Although Defendants classified Plaintiff and members of the Plaintiff Class as
18 exempt employees, Plaintiff's position and duties failed to meet the requirements of either the
19 administrative, executive, or professional exemptions of the applicable Wage Order and California
20 Labor Code section 510.

21 59. Defendants' conduct described herein violates California Labor Code sections 510
22 and 1194, and applicable Wage Orders. As a proximate result of Defendants' conduct, Plaintiff and
23 members of the Plaintiff Class have been damaged and deprived of overtime wages, in an amount to
24 be established at trial. Plaintiff and members of the Plaintiff Class now seek these wages, attorney's
25 fees and costs, and interest pursuant to California Labor Code sections 1194.

SIXTH CAUSE OF ACTION
(Unfair Competition)

60. Plaintiff incorporates by reference and re-allege paragraphs 1 through 59 as though fully set forth herein.

61. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the California Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

62. Plaintiff and members of the Plaintiff Class were not paid all wages owed during their employment, and were not provided legally compliant meal and rest breaks. Defendants also failed to provide legally compliant paystubs to Plaintiff and members of the Plaintiff Class throughout the employment relationship that failed to show, among other things, all hours worked.

63. Plaintiff is also informed and believe and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (California Business and Professions Code 17200 *et seq.*), pursuant to *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163 (2000).

64. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of Defendants’ unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for up to four (4) years from the filing of this Action.

SEVENTH CAUSE OF ACTION
Civil Penalties Pursuant to PAGA § 2698 et seq.

65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the

1 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
2 violations identified above.

3 67. On or about October 7, 2022, Plaintiff, through counsel, sent written notice to the
4 LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code
5 section 2698, *et seq.*, PAGA. After the expiration of 65 days from the filing of the PAGA Notice, if
6 the LWDA does not respond, Plaintiff will have fully exhausted her administrative remedy.

7 68. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
8 and all aggrieved employees for all violations of the Labor Code from October 7, 2022, through trial
9 on this matter.

10 **EIGHTH CAUSE OF ACTION**
11 **Failure to Reimburse Business Expenses**

12 69. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 68 as though
13 fully set forth herein.

14 70. Labor Code section 2802(a) states that "An employer shall indemnify his or her
15 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
16 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
17 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
18 unlawful."

19 71. Defendants knew that Plaintiff and members of the Plaintiff Class were required to
20 use their personal cell phones and home internet connections for work purposes. However,
21 Defendants did not reimburse Plaintiff and Class Members for these expenses.

22 72. Defendants' conduct described herein violated California Labor Code section 2802.
23 As a proximate result of Defendants' conduct, Plaintiff and members of the Class have been
24 damaged in an amount to be established at trial, and are entitled to recover these damages, as well as
25 interest and reasonable attorney's fees and costs, pursuant to statute.

26 **DAMAGES**

27 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 28 1. A jury trial;

