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County of Santa Clara
23CV416842
Reviewed By: R. Walker

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

11 SANDRA S. WENZEL, on behalf of
12 herself and other aggrieved employees,

13 Plaintiffs,

14 v.

15 ZSCALER, INC.; and DOES 1 through 10,
16 inclusive,

17 Defendants.

Case No. **23CV416842**

LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR
VIOLATION OF LABOR CODE SECTION
2751

1 **INTRODUCTION**

2 1. Plaintiff SANDRA S. WENZEL ("Plaintiff") brings this action against
3 Defendant ZSCALER, INC. ("ZSCALER") and DOES 1 through 10 on behalf of herself and
4 other aggrieved employees whom ZSCALER has paid since April 26, 2022, at least in part by
5 commission.

6 2. Plaintiff brings this action pursuant to the California Labor Code Private
7 Attorneys General Act ("PAGA"), Labor Code section 2698 *et seq.* for violation of Labor Code
8 section 2751. These violations are ongoing and continuing.

9 3. By this action, Plaintiff seeks civil penalties and attorneys' fees and costs.

10 **PARTIES**

11 4. Plaintiff is an individual residing in the city of San Diego, California in San
12 Diego County. Defendant employed Plaintiff as a Security Architect in California from
13 February 2, 2022, to February 24, 2023. In this role, Plaintiff's primary duties were in sales and
14 market strategy.

15 5. Defendant ZSCALER is a Delaware corporation headquartered in San Jose,
16 California. ZSCALER is a publicly traded cybersecurity company, offering a cloud-based
17 platform for web and mobile security and threat protection.

18 6. DOES 1 through 10, inclusive, are sued pursuant to California Code of Civil
19 Procedure section 474. Plaintiff is ignorant of the true names or capacities of these defendants,
20 and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint
21 to allege their true names and capacities when ascertained.

22 7. Each of the fictitiously named defendants is legally responsible in some manner
23 for the wrongs and injuries alleged herein. At all times mentioned herein each defendant was or
24 is the actual or ostensible agent or employee of each and all the other defendants and was or is
25 acting within the course and scope of said agency or employment. Defendants, and each of
26 them, were or are engaged in a joint venture and an integrated or joint enterprise and were or
27 are acting within the scope of and in pursuance of the joint venture and enterprise.
28

8. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendant and each of the DOE defendants are Plaintiff's and aggrieved employees' employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos, aiders and abettors, and/or co-conspirators of one or more of their co-defendants, and, in committing the acts alleged herein, were or are acting within the course and scope of said agency, employment, partnership, joint venture, and/or conspiracy, or were or are aiding and abetting their co-defendants. Plaintiff is informed and believes and thereon alleges Defendants and each of the DOE defendants are legally responsible for all the unlawful conduct, policies, practices, acts and omissions as described in this Complaint.

JURISDICTION AND VENUE

9. This court has jurisdiction over this action pursuant to Code of Civil Procedure section 410.10. This action seeks relief exceeding the minimal jurisdiction limits of the Superior Court of California. The penalties and other monetary relief will be established according to proof at trial.

10. Venue is proper in Santa Clara County under Code of Civil Procedure sections 393, subdivision (a), and 395.5. ZSCALER’s principal place of business is in Santa Clara County, ZSCALER employs some of the aggrieved employees in Santa Clara County, and committed some of the Labor Code violations for which Plaintiff seeks penalties in Santa Clara County. Accordingly, ZSCALER’s “liability” (§ 395.5), and “some part of the cause” (§ 393), arose in Santa Clara County. (See *Crestwood Behavioral Health, Inc. v. Super. Ct.* (2021) 60 Cal.App.5th 1069, 1075-77.)

PROCEDURAL POSTURE

11. Plaintiff provided Defendant ZSCALER written notice of the factual and legal bases for the Labor Code violations alleged in this Complaint by certified mail on April 26, 2023. *See Exhibit A.* Plaintiff incorporates the contents of Exhibit A by reference.

12. Plaintiff further provided online notice to the Labor & Workforce Development Agency (“LWDA”) of the factual and legal bases for the Labor Code violations alleged in this Complaint also on April 26, 2023. The LWDA assigned case number LWDA-CM-951000-23.

1 13. Defendant had until May 29, 2023, to cure the curable violations set forth in
2 Plaintiff's written notice. On information and belief, Defendant has not submitted any cure
3 notice to LWDA within the allotted time.

4 **FIRST CAUSE OF ACTION**
5 **Civil Penalties Under PAGA for Violations of Labor Code Section 2751(a) and (b)**

6 14. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

7 15. ZSCALER has had many current and former employees in California whose
8 compensation included commissions.

9 16. Ms. Wenzel's employment agreement provided for a base salary on an exempt
10 basis, plus commission and restricted stock units.

11 17. Labor Code section 2751, subdivision (a), provides that whenever an employer
12 enters into a contract of employment with an employee for services to be rendered within
13 California, and the contemplated method of payment of the employee involves commissions,
14 "the contract shall be in writing and shall set forth the method by which the commissions shall
15 be computed and paid." (Lab. Code, § 2751, subd. (a).) The purpose of this requirement is to
16 protect employees whose compensation includes commissions who otherwise would be
17 vulnerable to employer manipulations and obfuscations regarding their compensation. (*See Lett*
18 *v. Paymentech, Inc.* (N.D. Cal. 1999) 81 F.Supp.2d 992, 994.)

19 18. Labor Code section 2751, subdivision (b), provides in pertinent part that when
20 employers pay employees with commissions, "[t]he employer shall give a signed copy of the
21 contract to every employee who is a party thereto and shall obtain a signed receipt for the
22 contract from each employee." (Lab. Code, § 2751, subd. (b).) The purpose of this requirement
23 is to address "the absence of written means of proof." (*Lett, supra*, 81 F.Supp.2d at p. 994.)

24 19. ZSCALER has violated section 2751, subdivision (b), since at least April 24,
25 2022, by failing to provide its commissioned employees like Ms. Wenzel copies of their
26 commission contract that include the signature of an authorized ZSCALER representative.
27 Neither of the commission contracts that ZSCALER provided Ms. Wenzel in February and
28 August 2022 included the signature of an authorized ZSCALER representative. These

1 violations of Labor Code section 2751, subdivision (b), are ongoing and continuous until they
2 are remedied.

3 20. On information and belief, ZSCALER has also violated section 2751,
4 subdivision (a), since at least April 24, 2022, by failing to provide its commissioned employees
5 like Ms. Wenzel written commission contracts at the time of employment. ZSCALER provided
6 Ms. Wenzel a proposed commission contract 10 days after she started working for ZSCALER.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for the following relief against Defendants, jointly and
9 severally as follows:

- 10 a. For an award of civil penalties pursuant to PAGA in an amount according to proof,
11 with 75% of the penalties to be remitted to the LWDA and 25% of the penalties to
12 be remitted to Plaintiff and the aggrieved employees;
- 13 b. For an award of attorneys' fees as provided by California Labor Code section 2699,
14 subdivision (g,) and all other applicable statutes and law;
- 15 c. For all costs of suit as provided by the Labor Code, Code of Civil Procedure, and
16 all other applicable law; and
- 17 d. For any other relief the Court deems just and proper.

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19
20 Dated: June 2, 2023.

By: 

Dan Gildor
VALERIAN LAW, P.C.

Attorneys for Plaintiff

Exhibit A

VALERIAN LAW, PC

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April 26, 2023

VIA ONLINE FILING

Labor and Workforce Development Agency
Department of Industrial Relations

Re: Labor Code Violations Committed by Zscaler, Inc.

Dear Labor and Workforce Development Agency:

I write pursuant to California Labor Code section 2699.3 to notify you of the Labor Code violations committed by Zscaler, Inc. ("Zscaler") against my client Sandra Wenzel and all other current and former Zscaler employees in California.

Zscaler is a Delaware Corporation with its principal place of business in San Jose, California. It is a publicly traded cybersecurity company, offering a cloud-based platform for web and mobile security and threat protection.

Ms. Wenzel is a California resident who worked for Zscaler as a Security Architect in California from February 2, 2022 to February 24, 2023. Her primary duties were in sales and building market strategy.

Grounds for Labor Code PAGA Claims

I. Violations of Labor Code § 1102.5 and § 232.5(c)

California Labor Code § 1102.5 prohibits retaliation against employees for internally reporting legal violations or disclosing information to superiors or other corporate authorities that may constitute a legal violation by the employer. It also prohibits retaliation against those perceived to have undertaken a protected activity such as internal or external whistleblowing, and anticipatory retaliation by a manager who believes the employee might be a prospective whistleblower.

Labor Code § 232.5, subdivision(c) prohibits retaliation against employees who disclose information about an employer's working conditions.

Zscaler wrongfully terminated Ms. Wenzel after she made protected disclosures and statements, in good faith, to Zscaler management and the ethics hotline, in an attempt to protect the Company as well as to protect her own rights. Zscaler also terminated Ms. Wenzel because she was perceived to have made protected disclosures about working conditions.

In addition to Ms. Wenzel, Zscaler also discharged, disciplined, or otherwise discriminated against numerous employees who disclosed information to other Zscaler employees, and/or externally to the public or third parties, about the employer's working conditions.

A. Relevant Factual Background

In mid-January of 2023, a coworker at Zscaler told Ms. Wenzel about a Slack channel called “#team-global-gtm-pc-team,” which was accessible to all employees. Ms. Wenzel subsequently accessed the Slack channel, which she discovered contained discussions by the People and Culture Team concerning plans — referred to as “Project Vail” — for an upcoming round of layoffs, which at that point in time had not been announced to the company as a whole. Through word of mouth, various coworkers and managers in addition to Ms. Wenzel discovered and accessed this Slack channel.

The Slack channel included a post by Michelle Forney, a senior Manager from the Employee Relations team, listing a set of shared files sent to participants involved in the layoff planning, and wrote at the top of the post, “Please don't share outside this group.” The discussions on this channel also contained potentially insensitive and “joking” language surrounding these company plans - plans that would substantially affect the employment and lives of numerous Zscaler employees.

Ms. Wenzel was concerned by the fact that this Slack channel was accessible to all employees, a workforce of about 5,000 people. Therefore, in mid-January 2023 Ms. Wenzel took screenshots of the Slack channel and shared them in a meeting with her direct manager, Seth Beal, informing him of her concerns about the company's failure to follow normal security protocols for this type of information.

Following this meeting, Ms. Wenzel did not receive further communications or instructions from HR, the People and Culture Team, nor her manager concerning Project Vail. No one told her to stop accessing it. The company-wide access permissions remained in place. Although numerous managers were on notice that the access permissions was “company wide,” Zscaler did nothing to restrict internal access to the Slack channel for over one week, at least.

On or around January 21, 2023, certain screenshots from Zscaler's Project Vail appeared publicly in an anonymous post on Blind, a social media site. Blind allows employees to anonymously post information concerning their companies and workplace experiences. Blind is one of multiple online fora where tech industry employees have been posting about layoffs, asking each other about compensation, benefits and working conditions, and discussing and exchanging all kinds of employment-related information.

The Blind post in question was titled “Hey Zscaler! “Next Week is Gonna Be

Wild!.”” Accompanying the screenshots from Project Vail, the anonymous poster wrote a message to the effect of: “I received these screenshots, normally I wouldn’t post this since we’re all going through layoffs and you guys are my competitors, but I’m posting to let you know how shitty of an HR team you guys have, because they are making jokes about laying people off.” Ms. Wenzel did not and does not know who made this post on Blind.

After this Blind post publicly criticized Zscaler, Zscaler launched a crackdown. It restricted access to the Slack channel and launched an investigation into who had made the Blind post and who had accessed the Slack channel without being invited. Zscaler could see all along which employees accessed the Slack channel and had already been alerted through multiple managers that the channel had been open to the entire company. But at no point did Zscaler respond until after someone commented on a social media site.

Zscaler interrogated numerous employees for the purpose of determining who had taken screenshots of Project Vail and shared the screenshots with anyone. Zscaler suspected that an employee had passed the screenshots onto another employee or to a contact a third-party company, ultimately leading to the Blind post criticizing Zscaler’s HR team.

In this crackdown Zscaler’s Michelle Forney and other HR representatives interrogated numerous employees, suspended some employees, and fired Ms. Wenzel. Ms. Forney was one of the people running and posting on the Project Vail Slack channel. Indeed, one of her responsibilities in her HR role was to maintain access limitations to the layoff plan. Hence, she was potentially responsible for the breach of the company’s security protocols in failing to restrict access to it.

On February 13, 2022, Ms. Wenzel was questioned during a video meeting with Michelle Forney, of the People and Culture (HR) Team, about Ms. Wenzel’s accessing of the Project Vail Slack channel. The meeting had been scheduled to discuss an HR investigation unrelated to the Slack channel. However, Ms. Forney quickly shifted the topic to Ms. Wenzel’s accessing of the Project Vail Slack channel, the Blind post and the issue of who had disclosed information on social media.

During the meeting, Ms. Forney informed Ms. Wenzel that there was forensic evidence of how often Ms. Wenzel had accessed the Project Vail channel, and mentioned that the details had appeared on a social media channel. When Ms. Forney asked factual questions, Ms. Wenzel answered them honestly. The entire meeting was approximately 20 minutes.

Towards the end of the meeting, Ms. Forney accused her of having made the post on Blind and threatened her with legal action. Ms. Forney told Ms. Wenzel that the Legal Team was investigating through Blind, and that they would report the employee to the SEC for insider trading. Ms. Wenzel told Ms. Forney that she was not involved in causing the information to be public on Blind. Ms. Wenzel became concerned that HR was looking for

scapegoats and that the investigation was tainted by Ms. Forney's conflict of interest. Feeling unfairly targeted and ambushed. Ms. Wenzel told Ms. Forney that she did not believe she had any further information to provide. At the end of this meeting, Ms. Forney informed Ms. Wenzel that she was being suspended pending investigation. Ms. Wenzel's devices were immediately locked.

On February 14, 2023, Ms. Wenzel made an internal ethics complaint by phone, which was confirmed in writing. The complaint stated Ms. Wenzel's concerns about the exposure of sensitive information to the public and concerns that her rights were being violated because Ms. Forney was retaliating against her for making the report to Mr. Beal, and it was a conflict-of-interest for the Company to entrust this investigation to Ms. Forney, one of the HR leaders running and posting on the Slack channel.

On February 22, 2023, Ms. Wenzel received a call from Mr. Beal, her manager, and Curt Sellars, VP of People and Culture, informing her that she was being terminated effective February 24. During the meeting, Ms. Wenzel was told that she was "terminated for accessing confidential data and not being forthcoming during investigation," with no further details stated.

B. Analysis

Zscaler's conduct violated Labor Code 1102.5 and 232.5(c) as to Ms. Wenzel and other current and former employees because, among other things:

- Ms. Wenzel was fired at least in part because of her ethics complaint, which raised potential legal and policy violations with respect to how Zscaler handled its internal breach of protocols;
- Ms. Wenzel was fired because she was suspected of being responsible for the public post appearing on Blind.
- Ms. Wenzel was fired at least in part because she criticized the company for allowing HR to investigate employees for talking about problems that HR had created.
- Zscaler discriminated against employees who had accessed, shared and talked to one another about the Project Vail Slack channel.
- Zscaler discriminated against employees who were perceived as potentially making or causing the Blind post.
- The employees who were investigated, disciplined or treated unfavorably due to their allegedly unauthorized access of the channel, had not disclosed any protected confidential, proprietary or trade secret information, or any information subject to a legal privilege.

II. Labor Code Section 2751(a) and (b)

Zscaler has had many current and former employees in California whose

compensation included commissions. Ms. Wenzel's employment agreement provided for a base salary on an exempt basis, plus commission and restricted stock units. The commission plans in effect during Ms. Wenzel's tenure include the Zscaler 2022 Fiscal Year Sales Compensation Plan and the Zscaler 2023 Fiscal Year Sales Compensation Plan.

Labor Code § 2751(b) requires:

(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid.

Labor Code § 2751(b) provides in pertinent part:

The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.

The "signed copy" requirement in this provision means the company must provide a copy of the contract signed by the company's representative, and the "signed receipt" refers to the requirement that the employer obtain the employee's signature signifying receipt and agreement to the contract.

On January 12, 2022, Zscaler sent an offer letter to Ms. Wenzel. Ms. Wenzel accepted the offer electronically on the same day. Her anticipated start date, and actual start date, was February 2, 2022. Ms. Wenzel filled out the company's onboarding forms, including a form W-4 and direct deposit form, on or about January 14, 2022.

Even though Ms. Wenzel began work on February 2, 2022, Zscaler did not provide a proposed written commission plan to her until February 22, 2022. The commission plan was backdated to February 2, 2022. Furthermore, in the following fiscal year, a new commission plan with a start date of August 1, 2022 was not provided to her until December 1, 2022.

Furthermore, Ms. Wenzel was required to electronically sign these backdated Commission Plans, but at no time did Zscaler provide a signature of an authorized representative on a commission agreement. There was no mutually executed commission contract.

Zscaler's commission plans did not comply with the statutory requirements of Labor Code section 2751, because it did not provide written commission contracts at the beginning of employment, it backdated commission plans regularly, and it did not provide a "signed copy" of any commission contract to commissioned employees. These are continuing and ongoing violations.

III. Labor Code Sections 201, 202, and 203

Zscaler delayed payment of final earned wages, including base pay and vacation wages, to employees upon resignation and termination. Zscaler processed payroll semimonthly for California employees. Zscaler had scheduled Ms. Wenzel's involuntary termination for February 24, 2023. However, Zscaler failed to provide her final paycheck on February 24, 2023. Instead, Zscaler issued a final paycheck on February 28, 2023, the last day of the month that was the regular semimonthly payment date. Zscaler did not pay her a waiting time penalty for the late payment.

We believe the company has noncompliant payroll policies and practices that affect the wages of numerous California employees during the offboarding processes. We believe Zscaler routinely delayed payment of final wages to separating employees. Section 201 requires final wages to be paid no later than the day of discharge. Section 202 requires final wages to be paid on the last day of work if an employee provided at least 72 hours advance notice of the day they intended to quit, or within 72 hours of the day of quitting if that advance notice was not provided. We believe Zscaler routinely paid final wages to California employees on one of two semimonthly pay dates.

Zscaler is a large technology corporation headquartered in San Jose, California. Its failure to timely issue final wages upon separation is willful and intentional and triggers the duty to pay waiting time penalties. Zscaler has not paid waiting time penalties.

For failure to timely provide a final paycheck to employees upon separation from employment and failure to pay waiting time penalties, Zscaler has violated sections 201, 202, and 203.

Conclusion

Ms. Wenzel is personally aggrieved by the above-described violations. There are potentially hundreds of additional employees who are aggrieved by some or all of the identified Labor Code violations. The aggrieved employees are all current and former employees in California.

As a result of the past, present, and ongoing violations alleged herein, Ms. Wenzel provides this notice to the LWDA and Zscaler pursuant to Labor Code section 2699.3. If the LWDA declines to investigate, Ms. Wenzel intends proceed as a PAGA representative plaintiff to recover civil penalties and attorneys' fees and costs for all violations of the Labor Code alleged herein from within a year of the date of this notice to the date of judgment.

Sincerely,



Xinying Valerian

Service List

Via Certified Mail:

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