

RECEIVED

VENTURA SUPERIOR COURT

12/4/23

Electronically
FILED

by Superior Court of California

County of Ventura

12/04/2023

Brenda L. McCormick
Executive Officer and Clerk

Hannah Cress
Hannah Cress
Deputy Clerk

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

Adam Rose (210880)
adam@frontierlawcenter.com
Theodore Tang (313294)
theodore@frontierlawcenter.com
Manny Starr (319778)
manny@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, #2074
Calabasas, California 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-3433

Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

HOUSTON BAXLEY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

OTO DEVELOPMENT, LLC, a Delaware
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 2023CUOE017209

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

DEMAND EXCEEDS \$25,000.00

Plaintiff Houston Baxley (“Plaintiff”) hereby submits this Representative PAGA Action Complaint (“Complaint”) against Defendant OTO Development, LLC and Does 1 through 50 (collectively referred to as “Defendants”) on behalf of herself and aggrieved employees of Defendants for penalties for violations of the California Labor Code as follows:

INTRODUCTION

1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*, and the applicable California Industrial Welfare Commission’s (“IWC”) Wage Orders.

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees resulting from Defendants’ issuance of wages on paycards without employee authorization or consent, and failure to timely pay all final wages upon separation of employment.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the California Labor Code by creating and maintaining policies, practices, and customs that knowingly deny employees the above stated rights and benefits.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203, 212, 213, and 2698, *et seq.*

6. Venue is proper in Ventura County because Defendants do business in Ventura County, and Plaintiff worked for Defendants in Ventura County.

PARTIES

7. Plaintiff was employed by Defendants from in or about March 2022, until on or about July 1, 2023. Throughout her employment, Plaintiff worked as a non-exempt, hourly employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of
2 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
3 by California Labor Code e §§ 201-203, 212, 213, and 2698, *et seq.*

4 9. Plaintiff is informed and believes, and based thereon alleges, that Defendant OTO
5 Development, LLC was and is a Delaware limited liability company doing business in the State
6 of California. Plaintiff is informed and believes, and based thereon alleges, that Defendant OTO
7 Development, LLC is a hotel development and hospitality management company.

8 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
9 herein mentioned Defendants and Does 1 through 50, are and were corporations, business
10 entities, individuals, and partnerships, licensed to do business and actually doing business in the
11 State of California. As such, and based upon all the facts and circumstances incident to
12 Defendants' business, Defendants are subject to California Labor Code §§ 201-203, 212, 213,
13 and 2698, *et seq.*

14 11. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the Defendant sued herein as Does 1 through 50, inclusive, and for that reason,
16 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and members of the general public and
20 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

21 12. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants, and employees of each of the other
24 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
25 acting within the course and scope of said agency and employment.

26 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity.
2 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
3 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

5 14. At all times herein mentioned, Defendants, and each of them, were members of,
6 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
7 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

8 15. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
13 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
14 damages as herein alleged.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

17 **(BY PLAINTIFF ON BEHALF OF AGGRIEVED EMPLOYEES AGAINST ALL**
18 **DEFENDANTS)**

19 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
20 though fully set forth herein.

21 17. Plaintiff brings this cause of action on behalf as a proxy for the State of California
22 and in this capacity, seeks penalties on behalf of all current and former Aggrieved Employees
23 from September 26, 2022, through the present, for Defendants' violations of Labor Code §§ 201-
24 203, 212, and 213, based on Defendants' policy, practice, and procedure of (a) issuing payment
25 of wages to employees in the form of paycards without authorization or consent from employees,
26 which required employees to incur fees to use, was not fully cashable, and was not usable at all
27 financial institutions, in violation of Labor Code §§ 212 and 213; and (b) failing to timely pay all
28 wages to separated employees as a result of the issuance of paycards, in violation of Labor Code

1 §§ 201-203.

2 18. Labor Code § 212(a) unequivocally prohibits the payment of wages in any
3 manner that is not “negotiable and payable in cash, on demand, without discount, at some
4 established place of business in the state, the name and address of which must appear on the
5 instrument.” An employer also may not pay wages using “[a]ny scrip, coupon, cards, or other
6 thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in
7 money.”

8 19. Labor Code § 213(d) further states, in relevant part, that an employer may pay
9 employees by “depositing wages due or to become due or an advance on wages to be earned in
10 an account in any bank, savings and loan association, or credit union of the employee’s choice
11 with a place of business located in this state, *provided that the employee has voluntarily*
12 *authorized that deposit.*”

13 20. As a pattern and practice, Defendants violated Labor Code §§ 212 and 213 by
14 issuing paycards as payment of wages to Plaintiff and Aggrieved Employees without their
15 authorization or consent. Said paycards were not negotiable and payable in cash, on demand,
16 and without discount at established businesses in the State of California. Defendants issued to
17 Plaintiff and Aggrieved Employees payment of wages in the form of a paycard as the only
18 method of wage payment, without authorization or consent from Plaintiff and Aggrieved
19 Employees, and which required employees to incur fees to use, was not fully cashable, and not
20 usable at all financial institutions. As the paycards required fees for usage, Plaintiff and
21 Aggrieved Employees were not able to access all of the monies contained on such cards.
22 Consequently, Plaintiff and Aggrieved Employees did not receive the full amount of wages
23 earned.

24 21. Furthermore, Labor Code § 201 provides that all wages earned and unpaid at the
25 time of an employee’s discharge are due and payable immediately. Labor Code § 202 provides
26 that, in the case of an employee who resigns or quits, such wages must be paid not later than 72
27 hours thereafter, unless the employee has given 72 hours’ previous notice, in which case the
28 employee must be paid all wages due and earned at the time of quitting. Labor Code § 203

1 provides that an employer who willfully fails to pay such wages due to an employee who is
2 discharged or quits must pay that employee waiting time penalties in the form of a day's wages
3 up to 30 days until all of the wages owed are paid.

4 22. As a pattern and practice, Defendants also regularly and willfully failed and
5 refused to pay all wages due and earned to discharged employees at the time of their termination,
6 or within 72 hours of employees who quit and/or have resigned, or at the time of termination for
7 those employees who gave 72 hours' notice. More specifically, Defendants violated Labor Code
8 §§ 201-203 by, among other unlawful acts, issuing paycards as final payment of wages to
9 employees who have been discharged and/or resigned without such employees' authorization. As
10 a result of the fees incurred with the use of the paycards, Defendants failed to pay all earned
11 wages upon the separation of employment to Plaintiff and Aggrieved Employees who have
12 separated from employment.

13 23. On or about September 26, 2023, Plaintiff sent written notice to the California
14 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
15 §§ 201-203, 212, and 213, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General
16 Act ("PAGA"). Plaintiff also provided notice of said Labor Code violation to Defendants via
17 certified mail pursuant to the PAGA.

18 24. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
19 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the
20 written notice. As such, pursuant to Labor Code § 2699(a), Plaintiff and the Aggrieved
21 Employees may seek recovery of any and all applicable civil penalties on behalf of the State of
22 California for Defendants' violations of Labor Code §§ 201-203, 212, and 213.

23 25. Plaintiff has therefore complied with all notice and exhaustion requirements
24 pursuant to PAGA.

25 26. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
26 applicable civil penalties for Defendants' violations of Labor Code §§ 201-203, 212, and 213, for
27 the time period described above, on behalf of herself and other Aggrieved Employees.

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
3 this suit is brought against Defendants, jointly and severally, as follows:

4 1. Upon the First Cause of Action, for civil penalties pursuant to statute as set forth
5 in California Labor Code § 2698, *et seq.*, and for costs and attorney's fees;

6 2. On all causes of action for attorneys' fees and costs as provided by California
7 Labor Code § 218.5 and Code of Civil Procedure § 1021.5; and

8 3. For such other and further relief the Court may deem just and proper.
9

10 DATED: December 4, 2023

DIVERSITY LAW GROUP, P.C.

11
12 By: 

Larry W. Lee

Max W. Gavron

Kwanporn "Mai" Tulyathan

Attorneys for Plaintiff and Aggrieved Employees
15
16
17
18
19
20
21
22
23
24
25
26
27
28