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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Aida Cruz, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL

GABRIEL TORRES, on Behalf of Other
Current and Former Employees,

Plaintiff,

v.

PACIFIC DEBT, INC., and
DOES 1-10, Inclusive,

Defendants.

Case No.: 37-2024-00003429-CU-OE-CTL

PAGA ACTION

COMPLAINT FOR:

**(1) CLAIMS UNDER THE PAGA
(CA LABOR CODE § 2698 *ET SEQ*)**

[E-FILE]

DAMAGES EXCEED \$35,000

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff GABRIEL TORRES (“Plaintiff”), on behalf of other current and former employees, and asserts claims against defendant PACIFIC DEBT, INC. (“PACIFIC DEBT”), and Does 1-10 inclusive (collectively with PACIFIC DEBT, INC., “Defendants”), as follows:

JURISDICTION AND VENUE

1. This is a private attorneys general enforcement action brought by Plaintiff TORRES under the California Labor Code Private Attorneys General Act of 2004 codified in California Labor Code §2698, *et seq.* (“PAGA”). Plaintiff TORRES seeks PAGA penalties on behalf of PAGA Employees as defined herein.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10, which grants the California Superior Court original jurisdiction except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

3. This Court has jurisdiction over Defendants because, upon information and belief, each defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because Defendants transact business in the County of San Diego. Plaintiff performed work in the County of San Diego.

PARTIES

5. Plaintiff GABRIEL TORRES has been at times relevant and mentioned in this complaint as a resident of California who performed work as an employee in California, including work in County of San Diego County.

6. Plaintiff TORRES was an “employee,” at times relevant, as that term is defined in the California Labor Code and applicable California Industrial Welfare Commission (“IWC”) Wage Order.

7. Plaintiff TORRES is an “aggrieved employee,” at times relevant, as that term is defined in California Labor Code §2699 and the PAGA.

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1 8. Upon information and belief, Plaintiff is informed and believes, and thereon allege that, at
2 times relevant, PACIFIC DEBT has been an “employer” as that term is defined in the California Labor
3 Code, the PAGA and applicable IWC Wage Order.

4 9. Upon information and belief, Plaintiff is informed and believes, and thereon alleges, that
5 at relevant times mentioned herein PACIFIC DEBT has had a location and address in California and has
6 and continues to transact business in California, including in the County of San Diego, and further alleges
7 that conduct and injuries alleged herein occurred in California, including in the County of San Diego.

8 10. Whenever in this complaint reference is made to any act, deed, or conduct of PACIFIC
9 DEBT, the allegation means that the entities engaged in the act, deed, or conduct by or through one or
10 more of its officers, directors, agents, employees, or representatives, including those who were actively
11 engaged in the management, direction, control, or transaction of the ordinary business and affairs of the
12 entities.

13 11. Plaintiff is informed and believes, and thereon alleges, that at relevant times, Defendants
14 have been: (i) an “employer or other person acting on behalf of an employer” under California Labor Code
15 §§558(a) and 558.1(a) and (b) (“For purposes of [California Labor Code §558.1(a)], the term ‘other person
16 acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or
17 managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision
18 (b) of Section 3294 of the Civil Code.”); (ii) a “person who fails to pay the wages of each employee”
19 under California Labor Code §210(a); (iii) a “person who unlawfully withholds wages due any
20 employee...” under California Labor Code §225.5; (iv) an “other person violating...” under California
21 Labor Code §248.5(e); (v) a “person employing labor” under California Labor Code §§1174, 1174.5; (vi)
22 an “employer” under California Labor Code §§1182.12(b)(3) (an employer “means any person who
23 directly or indirectly, or through an agent or any other person, employs or exercises control over the wages,
24 hours, or working conditions of any person”); (vii) a “person acting either individually or as an officer,
25 agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the
26 minimum fixed...” under California Labor Code §1197.1(a); (viii) an “employer, or agent, manager,
27 superintendent, or officer thereof” under California Labor Code §432.5; and/or (ix) a “person” under
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1 California Labor Code §225.5.

2 12. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
3 associate, or otherwise, of the all defendants sued herein as Does 1 through 10, inclusive and therefore sue
4 said defendants by such fictitious names (“Doe Defendants”). Plaintiff will amend this Complaint to insert
5 the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants
6 are ascertained.

7 13. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the
8 partners, agents, or principals and/or co-conspirators of PACIFIC DEBT and the Doe Defendants
9 performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or
10 knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each
11 of the Doe Defendants is liable to the extent of the liability of PACIFIC DEBT as alleged herein.

12 14. Plaintiff is further informed and believes, and thereon alleges, that at all times herein
13 material, each Defendant was completely dominated and controlled by its co-Defendants and each was
14 the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by
15 PACIFIC DEBT or defendants, such allegations and references shall also be deemed to mean the conduct
16 of each of the defendants, acting individually, jointly, and severally. Whenever and wherever reference
17 is made to individuals who are not named as defendants in this complaint, but were employees and/or
18 agents of defendants, such individuals at all relevant times acted on behalf of defendants named in this
19 complaint within the scope of their respective employments.

20 **ALLEGATIONS REGARDING PAGA ENFORCEMENT ACTION**

21 15. This is a PAGA enforcement action as to the First Cause of Action for recovery of civil
22 penalties under the PAGA. *See Arias*, 46 Cal. 4th at 969. PAGA permits an “aggrieved employee” to
23 bring a lawsuit for civil penalties on a representative basis, to address employer violations of the California
24 Labor Code committed against other current and former employees. *Id.* at 980-81. In this case, it is
25 alleged that Defendants violated California Labor Code §§201, 202, 203, 204, 204(b)(2), 221, 223, 224,
26 226(a), 226.7(b),(c), 245 *et seq.*, 246(l), 510, 512(a), 1182.12, 1194 *et seq.*, 1198, 2802 *et seq.*, as set forth
27 more fully below. Plaintiff TORRES seeks PAGA penalties on behalf of Defendants' other current and
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former California employees as follows:

(a) Any and all persons who are or were employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on November 15, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) (hereinafter collectively referred to as the "Business Expense PAGA Employees").

(b) Any and all persons who are or were employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on November 15, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) and who were eligible for commissions and/or working under a commission plan (hereinafter collectively referred to as the "Commission PAGA Employees").

(c) Any and all persons who are or were non-exempt employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on November 15, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) (hereinafter collectively referred to as the "Non-Exempt PAGA Employees").

Collectively, Business Expense PAGA Employees, Commission PAGA Employees and Non-Exempt PAGA Employees are referred to herein as "PAGA Employees."

16. Plaintiff TORRES' First Cause of Action is suitable for treatment as a PAGA enforcement action for the following reasons:

(a) the violations set forth in the First Cause of Action allege violations of the California Labor Code for which the Code provides a civil penalty to be assessed and recovered by the Labor and Workforce Development Agency ("LWDA") or any department, division, commission, boards, agencies, or employees, or for which a penalty is provided for under California Labor Code §2699(f);

(b) Plaintiff TORRES is an "aggrieved employee" because he was employed by the alleged violator and against whom one or more of the alleged violations was committed;

1 (c) Plaintiff TORRES has complied with the requirement to commence a civil action
2 pursuant to the PAGA including pursuant to California Labor Code §2699.3;

3 (d) Plaintiff TORRES has complied with the exhaustion requirements of PAGA by
4 providing written online notice to the LWDA on November 15, 2023 and notice by certified letter to
5 PACIFIC DEBT on November 14, 2023 concerning the PAGA claims Plaintiff TORRES intends to pursue
6 (the “PAGA Notice”). A true and correct copy of the PAGA Notice is attached hereto as Exhibit 1. Sixty-
7 five (65) days have elapsed since Plaintiff submitted the PAGA Notice to the LWDA and PACIFIC DEBT
8 and Plaintiff has received no response from the LWDA and no response or notice (including any “cure”
9 notice) from PACIFIC DEBT or any Defendants in response to the PAGA Notice.

10 **FACTUAL ALLEGATIONS**

11 17. At times relevant, including in the statutory periods, Plaintiff was employed by Defendants
12 in California. On information and belief, at times relevant, including in the statutory periods, Defendants
13 employed, and continue to employ, employees throughout the state of California, including PAGA
14 Employees.

15 **BUSINESS EXPENSES**

16 18. From time to time at times relevant, including in the statutory periods, Defendants have
17 had Business Expense PAGA Employees, including Torres, work remotely including from home. The
18 remote working policies and practices for Business Expense PAGA Employees include the following:

- 19 (i) the employee must already have basic computer access, secure workspace and connectivity
20 (Pacific Debt does not provide this) and the employee is responsible for maintenance and repair
21 of equipment. Pacific Debt will not reimburse or pay for equipment acquisition costs.
22 Compatible computer system, high-speed internet connection, and secure and suitable
workspace is required to be provided by the employee; and
- 23 (ii) a \$25 per month reimbursement for use of some pre-existing resources while working
24 remotely.

25 19. Remote employees provide and use their own workspace/office, work desk and chair,
26 lighting, utilities, telephone, computer equipment and software, internet and phone service, monitors,
27 printers, office supplies among other items. In recognition of everything that the employee is required to
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1 provide, use, replenish, maintain, and as needed repair, this pre-set \$25 per month reimbursement, from
2 time to time during times relevant, does not adequately provide indemnification for business
3 expenses/losses and time spent on remote business expense items.

4 20. This practice violates California Labor Code §2802. Section 2802 states “An employer
5 shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
6 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
7 employer, even though unlawful...” Additionally, Section 2804 of the California Labor Code states, “Any
8 contract or agreement, express or implied, made by any employee to waive the benefits of this article or
9 any part thereof, is null and void, and this article shall not deprive any employee or his personal
10 representative of any right or remedy to which he is entitled under the laws of this State.” As a result,
11 Section 2802 is violated and in violation of Section 2802, Defendants pass on (or attempt to pass on) the
12 employer’s cost of doing business onto Business Expense PAGA Employees.

13 **COMMISSION WAGE UNDERPAYMENTS AND UNTIMELY PAYMENTS**

14 21. PACIFIC DEBT is in the business of selling debt resolution services.

15 22. From time to time at times relevant, including in the statutory periods, under the company
16 compensation policy, Commission PAGA Employees, including Torres, are eligible to earn commission
17 wages (which includes but is not limited to commissions, incentives, and bonuses under the company’s
18 commission structure).

19 23. Under the commission structure, the commissions are non-discretionary commissions and
20 commissions are earned for a variety of reasons including for “paid enrollments.”

21 24. Per policy, commissions on “paid enrollments” are earned when the first successful
22 program payment clears (i.e. when verified debt enrolled has cleared one full monthly program deposit).

23 25. The commission policy also contains a chargeback component in which commissions are
24 charged back until three full regular payments have cleared. Per policy, all paid enrollments are subject to
25 chargeback if the consumer cancels their agreement prior to completing three full program deposits.
26 Chargebacks are a deduction of earned commission wages from wages. Chargebacks occur as a result of
27 this policy and also as a result of Defendants extending “goodwill” to its customer including by permitting
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1 cancellation of the customer agreement. In doing so, Defendants improperly shifts the company's business
2 losses to its employees through illegal chargebacks/clawbacks, commission wage forfeiture and unlawful
3 deduction of wages.

4 26. Through this conduct, from time to time at times relevant, including in the statutory
5 periods, Defendants require employees to give up a portion of their earned commission wages in order to
6 compensate for losses occasioned by policies and decisions associated with customers. In doing so, it is
7 making its employees insurers of Defendants' business losses from time to time at times relevant,
8 including in the statutory periods.

9 27. Further, per policy, commissions are paid on the 20th of the month for commissions earned
10 in the month prior, despite that commissions are calculable prior to the 20th of the month. This delay in
11 payment of wages applies equally both during the employee's employment and in the event the
12 employee's employment ends.

13 28. As a result, the following California Labor Code sections are violated: Sections 201-204
14 (provisions setting forth timely payment of wages due during and upon termination of employment;
15 waiting time penalty due), 221 ("It shall be unlawful for any employer to collect or receive from an
16 employee any part of wages theretofore paid by said employer to said employee."), 223 ("Where any
17 statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to
18 secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."), 224
19 (employer's right to withhold authorized sums not amounting to deduction from standard wages), 226(a)
20 (non-compliant wage statement result from commission wage violations including but not limited to gross
21 and net earned wages not accurately stated), 1198 (employment of any employee for under conditions of
22 labor prohibited by the wage order is unlawful). Sections 1187.12 and 1194 are violated to the extent
23 minimum wage has not been paid as a result of the chargebacks against wages and wages being collected.

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**FAILURE TO PAY OVERTIME, MEAL AND REST PREMIUMS, AND PAID SICK
LEAVE USING THE REGULAR RATE OF PAY/COMPENSATION AND PROPER
DIVISOR**

29. From time to time at times relevant, including in the statutory period, Non-Exempt PAGA Employees, including Torres, received base pay plus other forms of non-discretionary pay (including but not limited to commissions, incentives, bonuses and other forms of qualifying compensation/benefits) that collectively formed the employee's regular rate of pay/compensation (hereinafter "regular rate of pay").

30. The California Labor Code requires that overtime wages, meal and rest premium wages and paid sick time wages must be calculated using the employee's regular rate of pay.

31. From time to time at times relevant, including in the statutory period, Defendants miscalculated Non-Exempt PAGA Employee's overtime wages, meal and rest premium wages and paid sick time wages in that when these wages were paid, the wages were not paid correctly including for the reasons that the correct regular rate of pay was not used at all times (and at times only the base rate of pay was used), and the correct number divisor and dividend was not used in the calculations.

32. Moreover, when commission chargebacks occurred with respect to earned wages, this also resulted in the undercalculation of the regular rate of pay to be paid for overtime wages, meal and rest premium wages and paid sick time wages from time to time at times relevant, including in the statutory period.

33. The result is an underpayment of wages both during employment and upon separation of employment, a loss of overtime wages, inaccurate wage statements, and a loss of regular, break premium and paid sick time wages. As a result, Sections 226.7(b), (c), 246(l) 510, 512(a), and 1198 of the California Labor Code have been violated. Additionally, Section 204 of the California Labor Code is violated by failing to pay the wages due during employment at the times proscribed by statute and Sections 201/202 and 203 the California Labor Code are violated by failing to pay these wages by the time proscribed by Sections 201/202 and failing to pay a waiting time penalty to Non-Exempt PAGA Employees as applicable. Wage statement violations additionally have occurred as a result of wage violations and underpayment and under reporting of gross and net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee,

1 in that, in violation of Section 226(a) the California Labor Code, this information is reported incorrectly
2 on wage statements.

3 **MEAL PERIODS**

4 34. From time to time at times relevant, including in the statutory periods, Non-Exempt PAGA
5 Employees, including Torres, were not provided with the opportunity for a compliant meal period due to
6 staff shortages, customer service policies, minimum work requirements, and work demands.

7 35. While meal premium wages were paid, from time to time, the underlying non-compliant
8 meal is a violation.

9 36. As a result, Defendants have violated Sections 226.7(b), 512(a) and 1198 of the California
10 Labor Code.

11 **UNPAID OVERTIME WAGES AND MISREPORTING OF OVERTIME WAGES**

12 37. From time to time at times relevant, including in the statutory period, Non-Exempt PAGA
13 Employees, including Torres, were not paid accurate overtime wages for overtime worked and did not
14 have their overtime hours worked reported correctly on their wage statements including as a result of: the
15 workweek not matching up with the semi-monthly pay periods (e.g. paid on the fifth and the twentieth of
16 the month).

17 38. Overtime wages, from time to time at times relevant including in the statutory period,
18 therefore have been miscalculated and misreported as with overtime hours, and these wages moreover
19 have not been timely paid during and at separation of employment.

20 39. Further, corrections have not been made to the wage statements for overtime adjustments.

21 40. As a result of these actions, Defendants have failed to pay overtime wages correctly thereby
22 violating Sections 510, and 1198 of the California Labor Code. Additionally, they have also violated the
23 following California Labor Code sections: Sections 204 by failing to pay these wages during employment
24 when due at the times proscribed by law, and Sections 201/202 and 203 by failing to pay these wages by
25 the time proscribed by Sections 201/202 and failing to pay a waiting time penalty to Non-Exempt PAGA
26 Employees as applicable. Wage statement violations additionally have occurred as a result of the overtime
27 violations with respect to hours worked and gross and net wages earned in the pay period. In violation of
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1 Section 226(a) of the California Labor Code, earned overtime wages are reported incorrectly on wage
2 statements, the number of hours are reported incorrectly on wage statements as are the number of hours
3 at each applicable rate of pay.

4
5 **FAILURE TO PROVIDE AND MAINTAIN ACCURATE AND COMPLIANT WAGE
6 STATEMENTS**

7 41. Alleged herein, not all wage statements for Non-Exempt PAGA Employees are accurate
8 and compliant for which attaches a California Labor Code section 226(a) violation.

9 42. Further, from time to time at times relevant, including in the statutory periods, wage
10 statements for Non-Exempt PAGA Employees are not correct and compliant in that wage statements
11 misreport total hours worked in that non-work hours (including but not limited to meal premiums, holiday
12 and sick time) are counted and reported as hours worked, a violation of Section 226(a).

13 **PAGA ACTION CLAIM**

14 **FIRST CAUSE OF ACTION**

15 **PAGA Claims by Plaintiff on Behalf of PAGA Employees Against Defendants**

16 43. Plaintiff incorporates by reference and realleges each and every allegation contained above,
17 as though fully set forth herein, except for paragraphs 1-42.

18 44. PAGA permits an "aggrieved employee" to bring an action on behalf of himself or herself
19 and other current and former employees to address an violations of the California Labor Code.

20 45. Plaintiff is an "aggrieved employee" as defined under the PAGA because he is a person
21 who was employed by the alleged violator and against whom one or more of the alleged violations was
22 committed.

23 46. Plaintiff bring this PAGA action on behalf of Business Expense PAGA Employees,
24 Commission PAGA Employees and Non-Exempt PAGA Employees ("PAGA Employees").

25 47. Plaintiff TORRES has complied with the exhaustion requirements of PAGA by providing
26 written online notice to the LWDA on November 15, 2023 and notice by certified letter to PACIFIC DEBT
27 on November 14, 2023 concerning the PAGA claims Plaintiff TORRES intends to pursue (the "PAGA
28 Notice"). A true and correct copy of the PAGA Notice is attached hereto as Exhibit 1. Sixty-five (65) days

1 have elapsed since Plaintiff submitted the PAGA Notice to the LWDA and PACIFIC DEBT and Plaintiff
2 has received no response from the LWDA and no response or notice (including any “cure” notice) from
3 PACIFIC DEBT or any Defendants in response to the PAGA Notice.

4 48. In this case, as alleged and incorporated herein, Defendants violated the following
5 California Labor Code sections, and penalties are sought for same because Defendants from time to time
6 at times during the statutory periods: (a) violated California Labor Code §2802 *et seq.* with respect to
7 Business Expense PAGA Employees; (b) violated California Labor Code §§201-204, 204(b)(2), 221, 223,
8 224, 226(a), 1187.12, 1194, 1198 with respect to Commission PAGA Employees; (c) violated California
9 Labor Code §§201-204, 226(a), 226.7(b), (c), 246(l), 510, 512(a), 1198 with respect to Non-Exempt
10 PAGA Employees. For these violations, TORRES seeks all available remedies under the PAGA including
11 PAGA penalties (including underpaid wages as part of civil penalties to the extent available) on behalf of
12 the State of California, Business Expense PAGA Employees, Commission PAGA Employees and Non-
13 Exempt PAGA Employees, plus attorney’s fees and costs.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests entry of judgment against each defendant, jointly and severally,
16 as follows:

17 **On the First Cause of Action**

- 18 1. For civil penalties according to proof including underpaid wages as part of civil penalties;
19 2. For reasonable attorneys' fees and costs; and
20 3. For such other and further relief as the Court deems proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff requests a jury trial in this matter as permitted.

23 Dated: January 23, 2024

RICHARD LAW, P.C.

24 By: Diame Richard

25 DIANE E. RICHARD

26 Attorneys for Plaintiff Gabriel Torres
27
28

November 14, 2023

VIA ONLINE SUBMISSION

STATE OF CALIFORNIA
LABOR & WORKFORCE DEVELOPMENT AGENCY/DIR

VIA U.S. CERTIFIED MAIL

Pacific Debt, Inc.
Attn: Kevin Landie, Agent
750 B Street, Suite 1700
San Diego, CA 92101

Kevin Landie
c/o Pacific Debt, Inc.
750 B Street, Suite 1700
San Diego, CA 92101

Sierra Izzard
c/o Pacific Debt, Inc.
750 B Street, Suite 1700
San Diego, CA 92101

Re: Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq.

To: California Labor and Workforce Development Agency, Pacific Debt, Inc., Kevin Landie, and Sierra Izzard:

This firm represents Gabriel Torres (“Torres”) an employee of Pacific Debt, Inc. (“Pacific Debt”). This notice is intended to constitute notice, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code¹ §2698, et seq. (“PAGA”), of the provisions of the California Labor Code alleged to have been violated including the facts and theories to support the alleged violations by Pacific Debt, and officers and directors Kevin Landie (CEO, Secretary, CFO) and Sierra Izzard (Director of Operations). Torres is an aggrieved employee as he was employed by the alleged violators and against whom one or more of the alleged violations was committed. Torres alleges that Pacific Debt, Kevin Landie and Sierra Izzard have violated the following California Labor Code provisions and with respect to other current and former employees (“PAGA Employees”).

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¹ All statutory references herein are to the California Labor Code unless otherwise specified. The California Labor Code is referred to herein as “LC.”

PAGA Employees are defined as:

Any and all persons who are or were employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to this notice (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) (hereinafter collectively referred to as the “Business Expense PAGA Employees”).

Any and all persons who are or were employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to this notice (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) and who were eligible for commissions and/or working under a commission plan (hereinafter collectively referred to as the “Commission PAGA Employees”).

Any and all persons who are or were non-exempt employees of Pacific Debt, Inc., however titled, in the state of California at any time since one year prior to this notice (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) (hereinafter collectively referred to as the “Non-Exempt PAGA Employees”).

Failure to Indemnify for Business Expenses

From time to time at times relevant, including in the statutory periods, Pacific Debt, including but not limited through the actions of Kevin Landie and Sierra Izzard, has Business Expense PAGA Employees, including Torres, work remotely including from home. Pacific Debt’s remote working policies and practices for Business Expense PAGA Employees include the following:

- (i) the employee must already have basic computer access, secure workspace and connectivity (Pacific Debt does not provide this) and the employee is responsible for maintenance and repair of equipment. Pacific Debt will not reimburse or pay for equipment acquisition costs. Compatible computer system, high-speed internet connection, and secure and suitable workspace is required to be provided by the employee; and
- (ii) a \$25 per month reimbursement for use of some pre-existing resources while working remotely.

Remote employees provide and use their own workspace/office, work desk and chair, lighting, utilities, telephone, computer equipment and software, internet and phone service, monitors, printers, office supplies among other items. In recognition of everything that the employee is required to provide, use, replenish, maintain, and as needed repair, this pre-set \$25 per month reimbursement does not adequately provide indemnification for business expenses/losses and time spent on remote business expense items. This practice violates LC Section 2802. Section 2802 states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful...” Additionally, Section 2804 states, “Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall

not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.” As a result, Section 2802 is violated.

Commission Wage Underpayments and Untimely Payments

Pacific Debt is in the business of selling debt resolution services. From time to time at times relevant, including in the statutory periods, under Pacific Debt’s compensation policy, Commission PAGA Employees, including Torres, are eligible to earn commission wages (which includes but is not limited to commissions, incentives, and bonuses under Pacific Debt’s commission structure).

Under Pacific Debt’s commission structure, the commissions are non-discretionary and commissions are earned for a variety of reasons including for “paid enrollments.” Per Pacific Debt policy, commissions on “paid enrollments” are earned when the first successful program payment clears (i.e. when verified debt enrolled has cleared one full monthly program deposit). Pacific Debt’s commission policy (which is directed and enforced by Kevin Landie and Sierra Izzard) also contains a chargeback component in which Pacific Debt charges back earned commissions until three full regular payments have cleared. Per policy, all paid enrollments are subject to chargeback if the consumer cancels their agreement prior to completing three full program deposits. Chargebacks are a deduction of earned commission wages from wages. Chargebacks occur as a result of this policy and also as a result of Pacific Debt extending “goodwill” to its customer including by permitting cancelation of the customer agreement after commissions are earned. In doing so, Pacific Debt improperly shifts the company’s business losses to its employees through illegal chargebacks/clawbacks, commission wage forfeiture and unlawful deduction of wages. Through this conduct, from time to time at times relevant, including in the statutory periods, Pacific Debt, Kevin Landie and Sierra Izzard require employees to give up a portion of their earned commission wages in order to compensate Pacific Debt for losses occasioned by Pacific Debt’s policies and decisions associated with customers. In doing so, it is making its employees insurers of Pacific Debt’s business losses from time to time at times relevant, including in the statutory periods.

Further, per policy, commissions are paid on the 20th of the month for commissions earned in the month prior, despite that commissions are calculable prior to the 20th of the month. This delay in payment of wages applies equally both during the employee’s employment and in the event the employee’s employment ends.

As a result, the following Labor Code sections are violated: Sections 201-204 (provisions setting forth timely payment of wages due during and upon termination of employment; waiting time penalty due), 221 (“It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”), 223 (“Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”), 224 (employer’s right to withhold authorized sums not amounting to deduction from standard wages), 226(a) (non-compliant wage statement result from commission wage violations including but not limited to gross and net earned wages not accurately stated), 1198 (employment of any employee for under conditions of labor prohibited by the wage order is unlawful). Sections 1187.12 and 1194 are violated to the extent minimum wage has not been paid as a result of the chargebacks against wages and wages being collected.

Failure to Pay Overtime, Meal and Rest Premiums, and Paid Sick Time Wages Using the Regular Rate of Pay/Compensation and Proper Divisor

From time to time at times relevant, including in the statutory periods, Non-Exempt PAGA Employees, including Torres, received base pay plus other forms of non-discretionary pay (including but not limited to commissions, incentives, bonuses and other forms of qualifying compensation/benefits) that collectively formed the employee's regular rate of pay/compensation (hereinafter "regular rate of pay").

The California Labor Code requires that overtime wages, meal and rest premium wages and paid sick time wages must be calculated using the employee's regular rate of pay. Here, Pacific Debt, Kevin Landie and Sierra Izzard miscalculated Non-Exempt PAGA Employee's overtime wages, meal and rest premium wages and paid sick time wages in that when these wages were paid, the wages were not paid correctly including for the reasons that the correct regular rate of pay was not used at all times (and at times only the base rate of pay was used), and the correct number divisor and dividend was not used in the calculations. Moreover, when commission chargebacks occurred with respect to earned wages, this also resulted in the undercalculation of the regular rate of pay to be paid for overtime wages, meal and rest premium wages and paid sick time wages. The result is an underpayment of wages both during employment and upon separation of employment, a loss of overtime wages, inaccurate wage statements, and a loss of regular, break premium and paid sick time wages. As a result, Sections 226.7(b), (c), 246(l) 510, 512(a), and 1198 have been violated. Additionally, Section 204 is violated by failing to pay the wages due during employment at the times proscribed by statute and Sections 201/202 and 203 are violated by failing to pay these wages by the time proscribed by Sections 201/202 and failing to pay a waiting time penalty to Non-Exempt PAGA Employees as applicable. Wage statement violations additionally have occurred as a result of wage violations and underpayment and under reporting of gross and net wages earned, and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in that, in violation Section 226(a), this information is reported incorrectly on wage statements.

Failure to Provide Meal Periods

From time to time at times relevant, including in the statutory periods, Non-Exempt PAGA Employees, including Torres, were not provided with the opportunity for a compliant meal period due to staff shortages, customer service policies, minimum work requirements, and work demands. And while Pacific Debt did pay meal premium wages from time to time, the underlying non-compliant meal is a violation. As a result, Pacific Debt, Kevin Landie and Sierra Izzard have violated Sections 226.7(b), 512(a) and 1198.

Unpaid Overtime Wages and Misreporting of Overtime Wages

From time to time at times relevant, including in the statutory periods, Non-Exempt PAGA Employees, including Torres, were not paid accurate overtime wages for overtime worked and did not have their overtime hours worked reported correctly on their wage statements including as a result of: the workweek not matching up with the semi-monthly pay periods (e.g. paid on the fifth and the twentieth of the month). Overtime wages therefore have been miscalculated and misreported as with overtime hours, and these

wages moreover have not been timely paid during and at separation of employment. Further, corrections have not been made to the wage statements for overtime adjustments, hours worked and the inclusive pay period as set forth in Sections 204(b)(2) and 226(a). As a result of these actions, Pacific Debt, Kevin Landie and Sierra Izzard fail to pay overtime wages correctly thereby violating Sections 510, and 1198. Additionally, they have also violated Sections 204 by failing to pay these wages during employment when due at the times proscribed by law and make necessary corrections to hours/inclusive pay period, and Sections 201/202 and 203 by failing to pay these wages by the time proscribed by Sections 201/202 and failing to pay a waiting time penalty to Non-Exempt PAGA Employees as applicable. Wage statement violations additionally have occurred as a result of the overtime violations with respect to hours worked and gross and net wages earned in the pay period. In violation of Section 226(a), the net and gross earned overtime wages are reported incorrectly on wage statements, the number of hours worked are reported incorrectly on wage statements for the inclusive pay period, as are the number of hours at each applicable rate of pay.

Failure to Provide and Maintain Accurate and Compliant Wage Statements

As detailed above, not all wage statements for Non-Exempt PAGA Employees are accurate and complaint for which attaches a Section 226(a) violation. Further, from time to time at times relevant, including in the statutory periods, wage statements for Non-Exempt PAGA Employees are not correct and not compliant in that wage statements misreport total hours worked in that non-work hours (including but not limited to units for the number of meal premiums paid, and the number of hours listed for paid holiday and sick time) are counted and reported as hours worked.

Please feel free to contact the undersigned with any questions you may have.

Very truly yours,

A handwritten signature in black ink that reads "Diane Richard". The signature is written in a cursive, slightly slanted style.

Diane E. Richard

From: LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov
Subject: Thank you for submission of your PAGA Case.
Date: November 15, 2023 at 9:29 AM
To: diane@richardlawpc.com



11/15/2023

LWDA Case No. LWDA-CM-994432-23
Law Firm : Richard Law, P.C.
Plaintiff Name : Gabriel Torres2
Employer: Pacific Debt, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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Sierra Izzard
c/o Pacific Debt, Inc.
750 B ST STE 1700
SAN DIEGO CA 92101-8131



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Pacific Debt, Inc.
Attention - Kevin Landie, Agent
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SAN DIEGO CA 92101-8131



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