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Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

Attorneys Plaintiff GILBERT CASTELLON on behalf of all similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

GILBERT CASTELLON, on behalf of all similarly situated aggrieved employees, Plaintiff, v. PRIORITY PLUS FINANCIAL, LLC, a California limited liability company; and DOES 1-50, inclusive, Defendants.	**Case No:** 30-2024-01375043-CU-OE-CXC **REPRESENTATIVE COMPLAINT FOR RECOVERY OF PENALTIES UNDER THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

Plaintiff GILBERT CASTELLON ("Plaintiff") on behalf of all other similarly situated aggrieved employees, hereby alleges on personal knowledge as to himself and on information and belief as to all others, as follows:

PARTY ALLEGATIONS

1. Defendant PRIORITY PLUS FINANCIAL, LLC ("Defendant"), is a limited liability company organized and existing under the laws of the State of California. Defendant's principal place of business is located at 18001 Cowan, Suite E, Irvine, CA 92614.

2. Plaintiff GILBERT CASTELLON ("Mr. Castellon") is an adult resident of the state of California. Mr. Castellon was hired by Defendant and worked for Defendant from on or about June 2022 to June 2023, at Defendant's Irvine, California location at 18001 Cowan, Suite E, Irvine, CA 92614 and at Defendant's Costa Mesa California location at 3200 Park Center Drive, 4th Floor,

Costa Mesa, CA 92626.

3. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to Plaintiffs, who therefore sues defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe and thereon allege that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

ALTER EGO ALLEGATIONS

4. Plaintiff is informed and believes and thereon alleges that some of the corporations, limited liability companies, and entities named as Defendants herein, including but not limited to PRIORITY PLUS FINANCIAL, LLC., and DOES 1 through 50, (hereinafter occasionally collectively referred to as the “ALTER EGO CORPORATIONS”), and each of them, were at all times relevant the alter ego corporations, limited liability companies, or entities of each other Defendant by reason of the following:

(a) Plaintiff is informed and believes and thereon alleges that said individual defendants, at all times herein mentioned, dominated, influenced and controlled each of the ALTER EGO CORPORATIONS and the officers thereof as well as the business, property, and affairs of each of said corporations, limited liability companies or entities or entities.

(b) Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, there existed and now exists a unity of interest and ownership between said individual defendants and each of the ALTER EGO CORPORATIONS; the individuality and separateness of said individual defendants and each of the ALTER EGO CORPORATIONS have ceased.

(c) Plaintiff is informed and believes and thereon alleges that, at all times since the incorporation of each, each ALTER EGO CORPORATION has been and now is a mere shell and naked framework which said individual defendants used as a conduit for the conduct of their personal business, property and affairs.

(d) Plaintiff is informed and believes and thereon alleges that, at all times herein mentioned, each of the ALTER EGO CORPORATIONS was organized by said individual defendants as a device to avoid individual liability and for the purpose of substituting financially irresponsible corporations, limited liability companies or entities in the place and stead of said individual defendants, limited liability companies or entities and each of them, and accordingly, each ALTER EGO CORPORATION was formed with capitalization totally inadequate for the business in which said corporation, limited liability company or entity was engaged.

(e) Plaintiff is informed and believes and thereon alleges that each ALTER EGO CORPORATION is insolvent.

(f) By virtue of the foregoing, adherence to the fiction of the separate corporate existence of each of the ALTER EGO CORPORATIONS would, under the circumstances, sanction a fraud and promote injustice in that Plaintiff would be unable to realize upon any judgment in his favor.

5. Plaintiff is informed and believes and thereon alleges that, at all times relevant hereto, the individual defendants and the ALTER EGO CORPORATIONS acted for each other in connection with the conduct hereinafter alleged and that each of them performed the acts complained of herein or breached the duties herein complained of as agents of each other and each is therefore fully liable for the acts of the other.

JURISDICTION & VENUE

6. This Court has jurisdiction over this controversy under Article 6, section 10 of the California Constitution and California Code of Civil Procedure § 410.10. This Court has subject matter jurisdiction over this action and over Defendant, which does business in the State of California and the County of Orange.

7. This Court has jurisdiction over Defendant because Defendant is an association, corporation, business entity, or individual that conducts substantial business in the State of California, County of Orange.

8. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395(a) in that each Plaintiff performed employment services and Defendant's principal place of business is located in this judicial district.

9. Plaintiff alleges the misconduct alleged in this Complaint occurred in the County of Orange.

10. Plaintiff alleges claims against Defendant in this Complaint that arise under California law.

GENERAL ALLEGATIONS

11. This is an action for relief from, inter alia, Defendant's failure to pay wages to their employees, and denial to Plaintiff and the Class the protections that the California Labor Code affords employees, as further alleged herein.

12. Defendant is a debt consolidation sales company in the State of California who sells debt consolidation services to California consumers.

13. To facilitate the sales of these debt consolidation services, Defendants employ numerous California residents to answer phones and conduct sales phone calls.

14. During the one-year period preceding the filing of this Complaint and Plaintiff's November 8, 2023, Notice to the California Labor & Workforce Development Agency ("LWDA"), Plaintiff worked for Defendant in the State of California.

15. During all relevant times, Defendants failed to pay Plaintiff and all similarly situated aggrieved employees minimum wage for all hours worked, failed to pay overtime wages for all overtime hours worked, failed to pay weighted overtime based the proper regular rate of pay, failed to provide meal and rest periods, failed to pay meal and rest period premiums premium penalties, failed to timely pay earned wages, made unlawful deductions from earned wages, required Plaintiff and all similarly situated aggrieved employees to agree, in writing, to unlawful terms and conditions of employment and compensation, failed to reimburse for work expenses, failed to maintain records reflecting all necessary employment information, failed to provide written notice of certain required wage and other information, failed to provide written contracts setting forth the method by which commissions shall be computed and paid, failed to pay earned wages upon termination of employment, and failed to provide accurate itemized wage statements.

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FIRST CAUSE OF ACTION

(Recovery of Penalties Under the Labor Code Private Attorneys General Act "PAGA") Against All Defendants and DOES 1-50

16. Plaintiff incorporates all previous paragraphs by this reference.

17. Plaintiff brings this representative claim on behalf of himself and all other aggrieved employees of Defendants under the Labor Code Private Attorneys General Act of 2004, as codified in Labor Code §§ 2698, et seq. ("PAGA") to recover unpaid wages, expenses, and statutory penalties.

18. Defendants are "persons" as contemplated within the meaning of subd. (b) of § 2699 of the Labor Code. Plaintiffs are each an "aggrieved employee" of Defendants as contemplated within the meaning of subd. (c) of § 2699 of the Labor Code.

A. Priority Plus Failed to Reimburse Employees for Work Expenses in Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 4-2001.

19. Labor Code § 2800 states:

> "An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."

20. Labor Code § 2802(a) states, in relevant part:

> "(a) 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…."

21. While Claimant was employed by Priority Plus, Claimant and other similarly situated aggrieved employees regularly used their own personal cell phone, computers, and maintained data and internet plans for the use of each. Priority Plus failed to reimburse Claimant for any or all these necessary business expenses in violation of § 2802.

22. Labor Code § 2802(c) provides that:

> "For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section."

Also, pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of $100 for each aggrieved employee per pay period for each intentional initial violation and $250 for each subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

B. Priority Plus Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 510, 1197, 1198, & 1199

23. Labor Code § 1197 states:

"The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

24. Labor Code § 1198 states:

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

25. Labor Code § 510 states:

"Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

26. While employed by Priority Plus, Claimant, and other similarly situated aggrieved employees regularly worked, and were regularly required to work more than eight hours per day and/or forty hours a week, without receiving lawful overtime compensation. Priority Plus also failed to pay lawful overtime wages at the regular rate of pay and regularly and intentionally paid commission wages separate from other earned wages for the same pay period to avoid paying all earned overtime wages.

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27. Labor Code § 1194 provides that:

"(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

28. Labor Code § 1194.2(a) provides, in relevant part:

"In any action under Section…1194…to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise."

29. Labor Code § 1194.5 provides:

"In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person."

30. Labor Code § 1197.1 provides that:

"(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203." See also IWC Wage Order No. 4-2001, item 4.

31. Labor Code § 218.6 provides:

"In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

32. Labor Code § 218.5 provides, in relevant part:

"(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

33. Labor Code § 1199 provides that:

"Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

34. Labor Code § 558 provides, in relevant part:

"(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee."

C. Priority Plus Failed to Provide Meal and Rest Periods and Failed to Pay Premium Wages for Missed Meal and Rest Periods in Violation of Labor Code §§ 226.7 & 512

35. Labor Code § 226.7(a) provides, in relevant part:

"(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

36. Labor Code § 512 provides, in relevant part:

"(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than

30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

37. While Claimant was employed by Priority Plus, it required Plaintiff and similarly situated aggrieved employees to work during mandated meal and rest periods and failed to pay premium wages for missed meal and rest periods.

38. Labor Code § 226.7(b) provides:

"(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee s regular rate of compensation for each work day that the meal or rest period is not provided."

39. Labor Code § 2699(f) provides, in relevant part:

"(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows…(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

D. Priority Plus failed to Timely Pay Wages Owed Both During Employment and Upon Termination in Violation of Labor code §§ 201, 202, 203, 204, & 210.

40. Labor Code § 201 states, in relevant part:

"(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

41. Labor Code § 202 states, in relevant part:

"(a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

42. Labor Code § 204 states, in relevant part:

"(a) All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month…(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

43. While Claimant was employed by Priority Plus, it failed to timely pay Claimant, and other current or former Employees, in accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly later than the proscribed time-period.

44. Claimant also alleges that Priority Plus regularly failed to timely pay all earned commissions at the time those wages were earned and capable of being calculated. Because commissions constitute wages under California law, Priority Plus fails to timely pay earned wages due to Employees in violation of California law.

45. Also, while Claimant was employed by Priority Plus, it willfully failed to timely pay Claimant and all other similarly situated aggrieved employees for all earned wages due to them upon termination of their employment.

46. Labor Code § 203 provides that:

"(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment."

47. Labor Code § 210 provides, in relevant part:

"(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

48. Labor Code § 218.5 provides, in relevant part:

"(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

49. Labor Code § 218.6 provides:

"In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

E. Priority Plus Failed to Timely Furnish Legally Compliant Wage statements in Violation of Labor Code §§ 226

50. Labor Code § 226(a) states, in relevant part:

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned…(7) the name of the employee and only the last four digits of his or her social security number…(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. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

51. The wage statements provided by Priority Plus to Claimant, and other similarly situated aggrieved employees, fail to comply with the requirements of §§ 226(a) and by failing to

provide all the information required by this section. The missing information required by §§ 226(a) and includes, *inter alia*, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

52. Labor Code § 226.3 provides:

> "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

F. Priority Plus Unlawfully Deducted Wages in Violation of Labor Code § 221

53. Labor Code § 221 states:

> "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."

54. As stated above, Claimant alleges that Priority Plus has a policy, practice, guideline and/or procedure by which Employees are not paid earned bonus and commission wages after termination. Claimant alleges that Priority Plus unlawfully withheld balance of these wages upon termination of Employees in violation of Labor Code § 221.

55. Claimant further alleges that Priority Plus regularly and intentionally makes unlawful deductions from earned wages during employment through unexplained deductions from earned commissions and unlawfully deducting hourly "draw" wages from earned commissions.

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56. Labor Code § 225 provides:

> "The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor."

57. Labor Code § 225.5 provides, in relevant part:

> "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:
>
> (a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
>
> (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

G. Priority Plus failed to maintain sufficient employment records in violation of Labor Code §§ 1174

58. Labor Code § 1174 states, in relevant part:

> "Every person employing labor in this state shall…(c) Keep a record showing the names and addresses of all employees employed…(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

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59. While Claimant was employed by Priority Plus, it failed to keep and maintain employment records in accordance with the location and temporal provisions of Labor Code § 1174.

60. Labor Code § 1174.5 provides:

> "Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500)."

H. Priority Plus Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751

61. Labor Code § 2751 provides, in relevant part:

> "(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. (b) 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."

62. While Claimant was employed by Priority Plus, it failed to provide Claimant and other similarly situated aggrieved employees with written contractual terms setting forth the method by which commissions shall be computed and paid.

63. Labor Code § 2699(f) provides, in relevant part:

> "(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows…(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

I. Priority Plus Knowingly Required Employees to Execute Unlawful Contractual Provisions in violation of Labor Code § 432.5

64. Labor Code § 432.5 states:

"No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

65. While Plaintiff was employed by Priority Plus, it required Plaintiff, and other similarly situated aggrieved employees, to execute one or more written agreements regarding, inter alia, confidentiality of "all details concerning or related to…employment relationship," unlawful compensation structures, and employees' indemnification of the employer, all of which are prohibited by California law.

66. Labor Code § 432.5 does not specify a specific remedy for a violation. However, for Labor Code violations for which no civil penalty is specified, a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each subsequent violation. (Labor Code § 2699(f)(2)).

J. Plaintiff Has Complied with PAGA Notice Requirements

67. Plaintiff has complied with the PAGA administrative requirements in the manner prescribed in Labor Code § 2699.3, including providing notice as set forth in Labor Code § 2699.3(a)(1). More than 65 calendar days have elapsed since the postmark date of Plaintiff's notice, as required under Labor Code § 2699(a)(2)(A). A true and correct copy of Plaintiff's PAGA notice dated November 8, 2023 is attached hereto as Exhibit "A."

PRAYER FOR RELIEF

WHEREFORE Plaintiffs request the following relief on all causes of action:

A. For civil penalties pursuant to Labor Code § 2698 et seq., for Plaintiff and all other similarly situated aggrieved employees.

B. An award providing for payment of costs of suit pursuant to Labor Code § 2698(g)(1) and other applicable law;

C. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and

D. Such other and further relief as the court may deem appropriate.

KEEGAN & BAKER, LLP

Dated: January 22, 2024

By: /s/ John J. Weber
Jason E. Baker
John J. Weber
Attorneys for Plaintiff

EXHIBIT A

KEEGAN & BAKER, LLP
BUSINESS & TRIAL ATTORNEYS

5820 Oberlin Dr., Suite 205 San Diego, CA 92121

Main: 858.558.9400 | Direct: 858.558.9407 | Facsimile: 858.558.9401 | Email: jweber@keeganbaker.com

November 8, 2023

Via Electronic Submission
California Labor & Workplace Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814

Via Certified Mail, Return Receipt Requested
Priority Plus Financial, LLC
18001 Cowan, Suite E
Irvine, CA 92614

Registered Agents, Inc.
Agent For Service of Process for Priority Plus Mortgage Company, Inc.
1401 21st Street, Suite R
Sacramento, CA 95811

NOTICE UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

Dear Sir or Madam:

This firm represents Gilbert Castellon (hereinafter, "Claimant"). This letter is sent pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.) as a prerequisite to bringing an action to enforce the California labor laws described below and to recover wages, expenses and penalties thereunder.

I. STATEMENT OF FACTS.

Priority Plus Financial, LLC, ("Priority Plus") is a corporation organized and existing under the laws of the state of Delaware. Priority Plus's principal place of business in California is located at 18001 Cowan, Suite E, Irvine, California 92614.

Priority Plus maintains multiple offices in the State of California.

Priority Plus is a debt relief/consolidation company which sells debt consolidation services to consumers throughout California. To facilitate the sales of these services, Priority Plus employs non-exempt employees, such as Claimant, to contact leads to sell debt consolidation and debt forgiveness services.

Claimant is an adult resident of the State of California. Claimant, and other similarly aggrieved employees, were employed by Priority Plus during the twelve (12) months preceding this notice in the State of California. Claimant and other similarly situated aggrieved employees earned hourly wages plus commission.

While Claimant was employed by Priority Plus, it failed to reimburse Claimant and other similarly situated aggrieved employees for work expenses incurred in direct consequence of the discharge of their duties in violation of Labor Code §§ 2800, 2802, and IWC Wage Order No. 4-2001.

While Claimant was employed by Priority Plus, it failed to pay Claimant, and other similarly situated aggrieved employees, minimum and overtime wages in violation of Labor Code §§ 510, 1197, 1198, & 1199.

While Claimant was employed by Priority Plus, it failed to provide meal and rest periods, and failed to pay proper premium wages for missed meal and rest periods, in violation of Labor Code §§ 226.7 & 512.

While Claimant was employed by Priority Plus, it willfully failed to timely pay wages to Claimant and other similarly situated aggrieved employees, both during employment and upon termination in violation of Labor Code §§ 201, 202, 204, & 210.

While Claimant was employed by Priority Plus, it failed to timely furnish to Claimant, and other similarly situated aggrieved employees, legally compliant wage statements in violation of Labor Code §§ 226, and IWC Wage Order No. 4-2001.

While Claimant was employed by Priority Plus, it unlawfully deducted wages from Claimant, and other similarly situated aggrieved employees, in violation of Labor Code § 221.

Whie Claimant was employed by Priority Plus, it knowingly required Claimant and other similarly situated aggrieved employees to agree, in writing, to unlawful terms and conditions of employment in violation of Labor Code § 432.5.

While Claimant was employed by Priority Plus, it failed to maintain records reflecting the employment information for Claimant and other similarly situated aggrieved employees, for at least three (3) years, as required by California Labor Code § 1174.

While Claimant was employed by Priority Plus, it failed to provide Claimant and other similarly situated aggrieved employees written notice of certain wage and other information required by Labor Code § 2810.5.

While Claimant was employed by Priority Plus, it failed to provide Claimant and other similarly situated aggrieved employees a written contract setting forth the method by which commissions shall be computed and paid in violation of Labor Code § 2751.

II. **LEGAL THEORY OF RECOVERY.**

A. **Priority Plus Failed to Reimburse Employees for Work Expenses in Violation of Labor Code § 2800, 2802, and IWC Wage Order No. 4-2001.**

Labor Code § 2800 states:

"An employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."

Labor Code § 2802(a) states, in relevant part:

"(a) 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…."

While Claimant was employed by Priority Plus, Claimant and other similarly situated aggrieved employees regularly used their own personal cell phone, computers, and maintained data and internet plans for the use of each. Priority Plus failed to reimburse Claimant for any or all of these necessary business expenses in violation of § 2802.

Labor Code § 2802(c) provides that:

"For purposes of this section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Also, pursuant to §1197.1, any employer who violates § 2802 is also subject to a civil penalty of $100 for each aggrieved employee per pay period for each intentional initial violation and $250 for each subsequent violation, either intentional or unintentional, plus the unlawfully withheld expenses.

B. <u>Priority Plus Failed to Pay Minimum Wages and Overtime Compensation in Violation of Labor Code §§ 510, 1197, 1198, & 1199</u>

Labor Code § 1197 states:

"The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

Labor Code § 1198 states:

"The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 510 states:

"Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

While employed by Priority Plus, Claimant, and other similarly situated aggrieved employees regularly worked, and were regularly required to work more than eight hours per day and/or forty hours a week, without receiving lawful overtime compensation. Priority Plus would also failed to pay lawful overtime wages at the regular rate of pay and regularly and intentionally paid commission wages separate from other earned wages for the same pay period to avoid paying all earned overtime wages.

Labor Code § 1194 provides that:

"(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code § 1194.2(a) provides, in relevant part:

"In any action under Section…1194…to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise."

Labor Code § 1194.5 provides:

"In any case in which a person employing an employee has willfully violated any of the laws, regulations, or orders governing the wages, hours of work, or working conditions of such employee, the division may seek, in a court of competent jurisdiction, and the court may grant, an injunction against any further violations of any such laws, regulations, or orders by such person."

Labor Code § 1197.1 provides that:

"(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203."
See also IWC Wage Order No. 4-2001, item 4.

Labor Code § 218.6 provides:

"In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

Labor Code § 218.5 provides, in relevant part:

"(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

Labor Code § 1199 provides that:

"Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

> (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
> (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
> (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

Labor Code § 558 provides, in relevant part:

"(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
> (3) Wages recovered pursuant to this section shall be paid to the affected employee."

C. <u>Priority Plus failed to Timely Pay Wages Owed Both During Employment and Upon Termination in Violation of Labor code §§ 201, 202, 203, 204, & 210.</u>

Labor Code § 201 states, in relevant part:

"(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code § 202 states, in relevant part:

"(a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code § 204 states, in relevant part:

"(a) All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month,

> on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month…(b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period."

While Claimant was employed by Priority Plus, it failed to timely pay Claimant, and other current or former Employees, in accordance with the provisions of Labor Code § 204, frequently paying earned wages significantly later than the proscribed time-period.

Claimant also alleges that Priority Plus regularly failed to timely pay employees all earned commissions at the time those wages were earned and capable of being calculated. Because commissions constitute wages under California law, Priority Plus fails to timely pay earned wages due to Employees in violation of California law.

Also, while Claimant was employed by Priority Plus, it willfully failed to timely pay Claimant and all other similarly situated aggrieved employees for all earned wages due to them upon termination of their employment.

Labor Code § 203 provides that:

> "(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment."

Labor Code § 210 provides, in relevant part:

> "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
>
>> (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
>> (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Labor Code § 218.5 provides, in relevant part:

"(a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

Labor Code § 218.6 provides:

"In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2."

D. <u>Priority Plus Failed to Timely Furnish Legally Compliant Wage statements in Violation of Labor Code §§ 226</u>

Labor Code § 226(a) states, in relevant part:

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee…(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned…(7) the name of the employee and only the last four digits of his or her social security number…(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. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

The wage statements provided by Priority Plus to Claimant, and other similarly situtated aggrieved employees, fail to comply with the requirements of §§ 226(a) and by failing to provide all the information required by this section. The missing information required by §§ 226(a) and includes, *inter alia*, the total hours worked, the beginning and/or ending dates of the pay period, name and address of the legal entity that is the employer, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, the overtime rate of pay, all deductions, and an itemization, accounting, or other explanation of how the commission is calculated.

Labor Code § 226.3 provides:

"Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law."

E. Priority Plus Unlawfully Deducted Wages in Violation of Labor Code § 221

Labor Code § 221 states:

"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."

As stated above, Claimant alleges that Priority Plus has a policy, practice, guideline and/or procedure by which Employees are not paid earned bonus and commission wages after termination. Claimant alleges that Priority Plus unlawfully withheld balance of these wages upon termination of Employees in violation of Labor Code § 221.

Claimant further alleges that Priority Plus regularly and intentionally makes unlawful deductions from earned wages during employment through unexplained deductions from earned commissions and unlawfully deducting hourly "draw" wages from earned commissions.

Labor Code § 225 provides:

"The violation of any provision of Sections 221, 222, 222.5, or 223 is a misdemeanor."

Labor Code § 225.5 provides, in relevant part:

"In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

(a) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
(b) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

F. Priority Plus failed to maintain sufficient employment records in violation of Labor Code §§ 1174

Labor Code § 1174 states, in relevant part:

"Every person employing labor in this state shall…(c) Keep a record showing the names and addresses of all employees employed…(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."

While Claimant was employed by Priority Plus, it failed to keep and maintain employment records in accordance with the location and temporal provisions of Labor Code § 1174.

Labor Code § 1174.5 provides:

"Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars ($500)."

G. Priority Plus Failed to Provide Written Commission Agreements in Violation of Labor Code § 2751

Labor Code § 2751 provides, in relevant part:

"(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. (b) 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."

While Claimant was employed by Priority Plus, it failed to provide Claimant and other similarly situated aggrieved employees with written contractual terms setting forth the method by which commissions shall be computed and paid.

Labor Code § 2699(f) provides, in relevant part:

"(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

> …(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation."

III. LABOR CODE PROVISIONS VIOLATED BY PRIORITY PLUS

Claimant alleges that Priority Plus violated Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 510, 1174, 1197, 1198, 2751, 2800, & 2802.

If Claimant does not receive written notice from the Labor and Workforce Development Agency within the time prescribed in Labor Code § 2699.3 subd. (a)(2)(a) that it intends to investigate the alleged violations, Claimant intends to file an action against Priority Plus seeking wages, expenses, penalties and other allowed damages pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 et seq.).

Respectfully,

John J. Weber
For **KEEGAN & BAKER, LLP**