

Emil Davtyan, Esq. (#299363)
Gregg Lander, Esq. (#194018)
Vanessa M. Ruggles, Esq. (#254031)
D.LAW, INC.
1635 Pontius Avenue, Floor 2
Los Angeles, CA 90025-3361
Tel.: (424) 320-6420 / Fax: (424) 320-6454
Emails: Emil@d.law
Gregg@d.law
Vanessa@d.law

Attorneys for Plaintiff KAITLYN BALAN,
on behalf of the State of California and all other
similarly situated aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KAITLYN BALAN, on behalf of herself
and all others similarly situated,

Plaintiffs,

v.

SCRIBEAMERICA, LLC, a California
limited liability company; and Does 1 to 10,
inclusive,

Defendants.

PAGA-ONLY ACTION

Case No.: **24STCV00872**

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT (Labor Code §§ 2698, et
seq.) for:**

- 1. Failure To Pay All Wages;**
- 2. Violations Of Labor Code § 510;**
- 3. Violations Of Labor Code § 552;**
- 4. Failure To Pay All Overtime Wages
At The Legal Overtime Pay Rate;**
- 5. Failure To Provide All Meal Periods;**
- 6. Failure To Authorize And Permit All
Paid Rest Periods;**
- 7. Failure To Reimburse For All
Business Expenses;**
- 8. Failure To Timely Furnish Accurate
Itemized Wage Statements;**
- 9. Derivative Violations Of Labor Code
§§ 201-202;**
- 10. Independent Violations Of Labor
Code §§ 201-202; and**
- 11. Violations Of Labor Code § 432.5**

Plaintiff Kaitlyn Balan, on behalf of the State of California and all other similarly situated
aggrieved employees ("Plaintiff"), complains and alleges as follows against Defendant
ScribeAmerica, LLC, and Does 1 to 10 ("Defendants"). Plaintiff is informed and believes, and on
the basis of that information and belief, alleges as follows:

///

I.

INTRODUCTION

1. This is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code (Labor Code) §§ 2698, et seq. PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and other aggrieved current and former employees to recover civil penalties for Defendants’ violations of the Labor Code.

2. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from one year preceding the date of the filing of the original notice with the Labor and Workforce Development Agency (“LWDA”) as alleged herein, up to and through the time of trial for this matter although this should not automatically be considered the statute of limitations for any cause of action herein.

3. The relevant job titles held by the California citizens in this action are Defendants’ nonexempt employees who were subjected to Defendants’ policies and practices as described herein (the “aggrieved employees”).

4. With regard to the aggrieved employees, Defendants have:

- a. Failed to pay straight time, minimum and/or overtime wages for all hours worked;
- b. Violated Labor Code § 510;
- c. Violated Labor Code § 552;
- d. Failed to pay all overtime wages at the legal overtime pay rate;
- e. Failed to provide all required meal periods;
- f. Failed to authorize and permit all paid required rest periods;
- g. Failed to reimburse for all work-related expenses;
- h. Failed to timely furnish accurate itemized wage statements;
- i. Derivatively Violated Labor Code §§ 201-202;
- j. Independently Violated Labor Code §§ 201-202;
- k. Violated Labor Code § 432.5; and

1 ALL DEFENDANTS

2 12. Defendants, and each of them, are now and/or at all times mentioned in this
3 Complaint were in some manner legally responsible for the events, happenings and circumstances
4 alleged in this Complaint.

5 13. Defendants, and each of them, proximately subjected Plaintiff and all other
6 similarly situated aggrieved employees to the unlawful practices, wrongs, complaints, injuries
7 and/or damages alleged in this Complaint.

8 14. Defendants, and each of them, are now and/or at all times mentioned in this
9 Complaint were the agents, servants, and/or employees of some or all other Defendants, and
10 vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all
11 times mentioned in this Complaint were acting within the course and scope of that agency,
12 servitude, and/or employment.

13 15. Defendants, and each of them, are now and/or at all times mentioned in this
14 Complaint were members of and/or engaged in a joint venture, partnership, and common
15 enterprise, and were acting within the course and scope of, and in pursuance of said joint
16 venture, partnership, and common enterprise.

17 16. Defendants, and each of them, at all times mentioned in this Complaint concurred
18 and contributed to the various acts and omissions of each and every one of the other Defendants
19 in proximately causing the complaints, injuries, and/or damages alleged in this Complaint.

20 17. Defendants, and each of them, at all times mentioned in this Complaint approved
21 of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in
22 this Complaint.

23 18. Defendants, and each of them, at all times mentioned in this Complaint aided and
24 abetted the acts and omissions of each and every one of the other Defendants thereby
25 proximately causing the damages alleged in this Complaint.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

JURISDICTION AND VENUE

19. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

20. The California Superior Court also has jurisdiction in this matter because the dollar amount of the civil penalties sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

21. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, Plaintiff Kaitlyn Balan and all other similarly situated aggrieved employees herein were all California citizens and Defendant ScribeAmerica, LLC, is a California limited liability company. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

22. Venue is proper in Los Angeles County under Code of Civil Procedure §§ 395(a) and 395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PENALTIES UNDER LABOR CODE § 2699

(On Behalf of the Aggrieved Employees)

(Against All Defendants)

23. Plaintiff incorporates by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

A. FAILURE TO PAY ALL WAGES

24. Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their

1 work.

2 25. Labor Code § 510(a) states in pertinent part, “Any work in excess of eight hours
3 in one workday and any work in excess of 40 hours in any one workweek ... shall be
4 compensated at the rate of no less than one and one-half times the regular rate of pay for any
5 employee.”

6 26. Labor Code § 1182.12, effective July 1, 2014, states, “Notwithstanding any other
7 provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not
8 less than nine dollars (\$9) per hour, and on and after January 1, 2016, the minimum wage for all
9 industries shall be not less than ten dollars (\$10) per hour.” Further, under Labor Code §
10 1182.12(b)(1)(A), for any employer who employs 26 or more employees, the minimum wage
11 shall be as follows: “From January 1, 2017, to December 31, 2017, inclusive, - ten dollars and
12 fifty cents (\$10.50) per hour.” Under Labor Code § 1182.12(b)(1)(B), for any employer who
13 employs 26 or more employees, the minimum wage shall be as follows: “From January 1, 2018,
14 to December 31, 2018, inclusive, - eleven dollars (\$11) per hour.” Under Labor Code §
15 1182.12(b)(1)(C), for any employer who employs 26 or more employees, the minimum wage
16 shall be as follows: “From January 1, 2019, to December 31, 2019, inclusive, - twelve dollars
17 (\$12) per hour.” Under Labor Code § 1182.12(b)(1)(D), for any employer who employs 26 or
18 more employees, the minimum wage shall be as follows: “From January 1, 2020, to December
19 31, 2020, inclusive, - thirteen dollars (\$13) per hour.” Under Labor Code § 1182.12(b)(1)(E), for
20 any employer who employs 26 or more employees, the minimum wage shall be as follows:
21 “From January 1, 2021, to December 31, 2021, inclusive, - fourteen dollars (\$14) per hour.”
22 Finally, under Labor Code § 1182.12(b)(1)(F), for any employer who employs 26 or more
23 employees, the minimum wage shall be as follows: “From January 1, 2022, and until adjusted by
24 subdivision (c) - fifteen dollars (\$15) per hour.”

25 27. Labor Code § 1194(a) states, “Notwithstanding any agreement to work for a
26 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
27 compensation applicable to the employee is entitled to recover in a civil action the unpaid
28 balance of the full amount of this minimum wage or overtime compensation, including interest

thereon, reasonable attorney's fees, and costs of suit."

28. Further, under Labor Code § 1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

29. Under Labor Code § 1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

30. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants, consistently:

a. Administered a uniform company policy and practice as to the pay policies regarding Plaintiff and all other similarly situated aggrieved employees; and

b. Scheduled to work and/or required Plaintiff and all other similarly situated aggrieved employees to work without paying for all time they were under Defendants' control including but not limited to work-related tasks at the beginning of their shifts before clocking in and pre-shift Covid-19 temperature checks, which included waiting in line.

31. Because Defendants required Plaintiff and all other similarly situated aggrieved employees to remain under Defendants' control without paying therefor, this resulted in Plaintiff and all other similarly situated aggrieved employees earning less than the legal minimum wage in the State of California.

B. VIOLATIONS OF LABOR CODE § 510

32. Labor Code § 510(a) states in pertinent part: "[T]he 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 any employee. ... In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

33. Labor Code § 1194(a) states: "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

1 balance of the full amount of this minimum wage or overtime compensation, including interest
2 thereon, reasonable attorney's fees, and costs of suit."

3 34. Labor Code § 204 establishes the fundamental right of all employees in the State
4 of California to be paid wages, including straight time and overtime, in a timely fashion for their
5 work.

6 35. Under Labor Code § 1198, it is unlawful to employ persons for longer than the
7 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC
8 Wage Order(s).

9 36. Defendants, as a matter of established company policy and procedure, at each and
10 every one of the individual facilities owned and/or operated by Defendants:

11 a. Administered a uniform company policy and practice as to the pay policies
12 regarding Plaintiff and all other similarly situated aggrieved employees;

13 b. Scheduled to work and in fact required Plaintiff and all other similarly situated
14 aggrieved employees to work seven days in a workweek on one or more
15 occasions;

16 c. Failed to always pay Plaintiff and all other similarly situated aggrieved
17 employees the correct overtime compensation for all work accomplished on
18 the seventh day in a workweek.

19 37. Defendants' pattern, practice, and uniform administration of corporate policy
20 regarding illegal employee compensation as described herein is unlawful and creates an
21 entitlement, under Labor Code §§ 218, 1194(a), and/or 2699, et seq., to recovery by Plaintiff and
22 all other similarly situated aggrieved employees, in a civil action, to the extent allowed by law.

23 **C. VIOLATIONS OF LABOR CODE § 552**

24 38. Labor Code § 552 states: "No employer of labor shall cause his employees to
25 work more than six days in seven."

26 39. Labor Code § 551 states: "Every person employed in any occupation of labor is
27 entitled to one day's rest therefrom in seven."

28 ///

1 40. Labor Code § 550 states: “As used in this chapter ‘day’s rest’ applies to all
2 situations whether the employee is engaged by the day, week, month, or year, and whether the
3 work performed is done in the day or night time.”

4 41. Defendants, as a matter of established company policy and procedure, at each and
5 every one of the individual facilities owned and/or operated by Defendants, during the relevant
6 time period:

7 a. Administered a uniform company policy and practice as to the pay policies
8 regarding Plaintiff and all other similarly situated aggrieved employees;

9 b. On one or more occasions, scheduled to work and in fact required Plaintiff
10 and all other similarly situated aggrieved employees to work more than six
11 days in seven.

12 42. Defendants’ pattern, practice, and uniform administration of corporate policy
13 regarding illegal employee compensation as described herein is unlawful and creates an
14 entitlement to recovery by Plaintiff and all other similarly situated aggrieved employees, in a
15 civil action, to the extent allowed by law.

16 **D. FAILURE TO PAY ALL OVERTIME WAGES AT THE LEGAL OVERTIME**
17 **PAY RATE**

18 43. Labor Code § 204 establishes the fundamental right of all employees in the State
19 of California to be paid wages, including straight time and overtime, in a timely fashion for their
20 work.

21 44. Labor Code § 510(a) states in pertinent part, “Any work in excess of eight hours
22 in one workday and any work in excess of 40 hours in any one workweek ... shall be
23 compensated at the rate of no less than one and one-half times the regular rate of pay for any
24 employee.”

25 45. The “regular rate of pay” includes “all [applicable] remuneration paid to, or on
26 behalf of the employee.” (29 U.S.C. § 207(3).) California law applies this standard for
27 determining an employee’s regular rate of pay for overtime calculation purposes.

28 ///

1 46. Labor Code § 1194(a) states, “Notwithstanding any agreement to work for a
2 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action the unpaid
4 balance of the full amount of this minimum wage or overtime compensation, including interest
5 thereon, reasonable attorney’s fees, and costs of suit.”

6 47. Defendants, as a matter of established company policy and procedure, at each and
7 every one of the individual facilities owned and/or operated by Defendants, consistently:

- 8 a. Administered a uniform company policy and practice regarding the payment
9 of wages, including overtime, commissions, and bonuses, to Plaintiff and all
10 other similarly situated aggrieved employees;
- 11 b. Required Plaintiff and all other similarly situated aggrieved employees to
12 work in excess of 8 hours per workday and/or in excess of 40 hours per
13 workweek;
- 14 c. Paid Plaintiff and all other similarly situated aggrieved employees non-
15 discretionary pay, including but not limited to shift differential and training
16 pay; and
- 17 d. Failed to pay Plaintiff and all other similarly situated aggrieved employees for
18 all work performed in excess of 40 hours per week at the appropriate overtime
19 rate, reflecting all applicable forms of remuneration, including but not limited
20 to said commissions and/or bonuses, as required by law.

21 48. Therefore, as a matter of Defendants’ established company policy, Defendants
22 violated Labor Code §§ 204, 510(a) and/or 1194 by failing to always pay Plaintiff and all other
23 similarly situated aggrieved employees all overtime wages at the legal overtime pay rate.

24 **E. FAILURE TO PROVIDE ALL MEAL PERIODS**

25 49. Labor Code § 204 establishes the fundamental right of all employees in the State
26 of California to be paid wages, including straight time and overtime, in a timely fashion for their
27 work.

28 ///

1 50. Labor Code § 226.7(b) provides “An employer shall not require an employee to
2 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
3 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
4 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

5 51. Labor Code § 512 provides “An employer may not employ an employee for a
6 work period of more than five hours per day without providing the employee with a meal period
7 of not less than 30 minutes, except that if the total work period per day of the employee is no
8 more than six hours, the meal period may be waived by mutual consent of both the employer and
9 employee. An employer may not employ an employee for a work period of more than 10 hours
10 per day without providing the employee with a second meal period of not less than 30 minutes,
11 except that if the total hours worked is no more than 12 hours, the second meal period may be
12 waived by mutual consent of the employer and the employee only if the first meal period was not
13 waived.”

14 52. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
15 amend working condition orders with respect to break periods, meal periods, and days of rest for
16 any workers in California consistent with the health and welfare of those workers.”

17 53. Section 11(D) of the IWC Wage Orders provides “If an employer fails to provide
18 an employee a meal period in accordance with the applicable provisions of this Order, the
19 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
20 compensation for each work day that the meal period is not provided.”

21 54. On one or more occasions, Plaintiff and all other similarly situated aggrieved
22 employees worked over 5 hours per shift and therefore were entitled to an uninterrupted meal
23 period of not less than 30 minutes prior to exceeding 5 hours of employment.

24 55. Further, on one or more occasions, Plaintiff and at least some similarly situated
25 aggrieved employees worked over 10 hours per shift and therefore were entitled to an
26 uninterrupted second meal period of not less than 30 minutes prior to exceeding 10 hours of
27 employment.

28 ///

1 56. As a matter of Defendants’ established company policy, Defendants failed to
2 always provide legally-complaint meal periods. These violations were caused by, inter alia,
3 Defendants’ failure to timely relieve Plaintiff and similarly situated aggrieved employees from
4 all duties and Defendants’ failure to relinquish control over how employees spend their break
5 time.

6 57. Plaintiff and all other similarly situated aggrieved employees did not validly or
7 legally waive their meal periods, by mutual consent with Defendants or otherwise.

8 58. Any written agreement with Defendants agreeing to an on-the-job paid meal
9 period was invalid because the nature of the work does not support on-duty meal periods.

10 59. Therefore, as a matter of Defendants’ established company policy, Defendants
11 failed to always comply with the meal period requirements established by Labor Code §§ 204,
12 226.7, 512, and 516 and Section 11 of the IWC Wage Order(s) by failing to always provide
13 Plaintiff and all other similarly situated aggrieved employees with a first and in some cases a
14 second legally compliant meal period.

15 **F. FAILURE TO AUTHORIZE AND PERMIT ALL PAID REST PERIODS**

16 60. Labor Code § 226.7(b) provides, “An employer shall not require an employee to
17 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
19 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

20 61. Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
21 amend working condition orders with respect to break periods, meal periods, and days of rest for
22 any workers in California consistent with the health and welfare of those workers.”

23 62. Section 12(A) of the IWC Wage Order(s) states, “Every employer shall authorize
24 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
25 of each work period. The authorized rest period time shall be based on the total hours worked
26 daily at the rate of 10 minutes net rest time per 4 hours or major fraction thereof. However, a rest
27 period need not be authorized for employees whose total daily work time is less than 3 ½ hours.
28 Authorized rest period time shall be counted as hours worked for which there shall be no

1 deduction from wages.”

2 63. Section 12(B) of the IWC Wage Order(s) states “If an employer fails to provide
3 an employee a rest period in accordance with the applicable provisions of this order, the
4 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
5 compensation for each workday that the rest period is not provided.”

6 64. Plaintiff and all other similarly situated aggrieved employees sometimes worked
7 over 4 hours per shift. Further, Plaintiff and all other similarly situated aggrieved employees
8 sometimes worked over 6 hours per shift, and in some cases over 10 hours per shift.

9 65. Plaintiff and all other similarly situated aggrieved employees were entitled to a
10 rest period of not less than 10 minutes for every 4 hours of work, or major fraction thereof.

11 66. As a matter of Defendants’ established company policy, Defendants failed to
12 always authorize and permit legally-compliant rest periods. These violations were caused by,
13 inter alia, Defendants’ failure to timely relieve Plaintiff and similarly situated aggrieved
14 employees from all duties and Defendants’ failure to relinquish control over how employees
15 spend their break time.

16 67. Therefore, as a matter of Defendants’ established company policy, Defendants
17 failed to always authorize and permit all legally-complaint rest periods established by Labor
18 Code §§ 226.7 and 516 and Section 12 of the IWC Wage Order(s).

19 **G. FAILURE TO REIMBURSE FOR ALL BUSINESS EXPENSES**

20 68. Under Labor Code § 450(a), “no employer...may compel or coerce any
21 employee... to patronize his or her employer, or any other person, in the purchase of any thing of
22 value.”

23 69. Under Labor Code § 2802(a), “an employer shall indemnify his or her employee
24 for all necessary expenditures or losses incurred by the employee in direct consequence of the
25 discharge of his or her duties, or of his or her obedience to the directions of the employer.”

26 70. Labor Code § 2804 states in pertinent part “Any contract or agreement, express or
27 implied, made by any employee to waive the benefits of this article or any part thereof is null and
28 void, and this article shall not deprive any employee or his personal representative of any right or

remedy to which she is entitled under the laws of this State.”

71. As a matter of Defendants’ established company policy, Plaintiff and all other similarly situated aggrieved employees were and are required by Defendants to personally incur necessary expenditures in direct consequence of the discharge of their duties, including but not limited to personal mobile devices and Covid protective masks, which in this case are required by Defendants and/or are necessary to the performance of the job performed by Plaintiff and all other similarly situated aggrieved employees.

72. Defendants failed to fully and reasonably reimburse Plaintiff and all other similarly situated aggrieved employees for all necessary expenditures at a reasonable rate, including but not limited to the aforementioned expenditures.

73. Therefore, as a matter of Defendants’ established company policy, Defendants failed to always comply with the reimbursement requirements established by Labor Code § 2802.

H. FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

74. Labor Code § 226(a) states in pertinent part, “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if 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, except as provided in subdivision (j), (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, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate by the employee....”

2 75. Further, the IWC Wage Orders § 7(A) states in pertinent part, “(A) Every
3 employer shall keep accurate information with respect to each employee including the following:
4 (3) Time records showing when the employee begins and ends each work period. Meal periods,
5 split shift intervals, and total daily hours worked shall also be recorded...(5) Total hours worked
6 in the payroll period and applicable rates of pay....”

7 76. Therefore, under Labor Code § 226(a) and the IWC Wage Orders § 7(A),
8 California employers are required to maintain accurate records pertaining to the total hours
9 worked for Defendants by Plaintiff and all other similarly situated aggrieved employees,
10 including but not limited to, beginning and ending of each work period, meal period and split
11 shift interval, the total daily hours worked, and the total hours worked per pay period and
12 applicable rates of pay.

13 77. As set forth herein in prior causes of action, Defendants allegedly failed to pay
14 Plaintiff and all other similarly situated aggrieved employees all wages due and owing.

15 78. Under *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, employers
16 who fail to provide accurate itemized wage statements are subject to PAGA penalties even when
17 the mistake is inadvertent and/or promptly corrected, and even if employees admittedly suffered
18 no injury; said employees are permitted to recover PAGA penalties without needing to prove the
19 “injury” and “knowing and intentional” elements of a Labor Code § 226(e) claim.

20 79. As a derivative result of this failure to pay wages and as a pattern and practice in
21 violation of Labor Code § 226(a) and the IWC Wage Orders § 7(A), Defendants did not and do
22 not maintain accurate records pertaining to the total hours worked for Defendants by Plaintiff
23 and all other similarly situated aggrieved employees, including but not limited to (1) gross wages
24 earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and/or
25 (5) all applicable hourly rates in effect during each respective pay period and the corresponding
26 number of hours worked at each hourly rate by each respective individual.

27 ///

28 ///

I. DERIVATIVE VIOLATIONS OF LABOR CODE §§ 201-202

80. Labor Code § 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to 30 days from the due date thereof, until paid or until an action therefore is commenced.

81. Plaintiff and all other similarly situated aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

82. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

83. As set forth above, Defendants willfully failed to pay Plaintiff and all other similarly situated aggrieved employees their entire wages due and owing at the time of their termination or within 72 hours of their resignation and failed to pay those sums for up to 30 days thereafter.

84. Defendants' willful failure to pay wages to Plaintiff and all other similarly situated aggrieved employees violates Labor Code §§ 201 and 202 because Defendants knew or should have known wages were due to Plaintiff and all other similarly situated aggrieved employees, as set forth above, but Defendants failed to pay them.

J. INDEPENDENT VIOLATIONS OF LABOR CODE §§ 201-202 REGARDING LATE FINAL PAY

85. Labor Code § 203 provides that if an employer willfully fails to timely pay, without abatement or reduction, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to 30 days from the due date thereof, until paid or until an action therefore is commenced.

86. Plaintiff and all other similarly situated aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

1 87. Defendants had a consistent and uniform policy, practice and procedure of
2 willfully failing to timely pay the earned wages of Defendants' former employees, according to
3 amendment or proof.

4 88. For example, Plaintiff Kaitlyn Balan resigned on January 6, 2023. However,
5 thereafter she received a check dated January 17, 2023.

6 89. As such, Defendants willfully failed to pay Plaintiff and all other similarly
7 situated aggrieved employees all wages due and owing at the time of their termination and/or
8 within 72 hours of their resignation.

9 90. Defendants' willful failure to pay wages to Plaintiff and all other similarly
10 situated aggrieved employees violates Labor Code §§ 201 and 202 because Defendants knew or
11 should have known wages were due to Plaintiff and all other similarly situated aggrieved
12 employees, as set forth above, but Defendants failed to pay them.

13 **K. VIOLATIONS OF LABOR CODE § 432.5**

14 91. Labor Code § 432.5 states, "No employer, or agent, manager, superintendent, or
15 officers thereof, shall require any employee or applicant for employment to agree, in writing, to
16 any term or condition which is known by such employer, or agent, manager, superintendent, or
17 officer thereof to be prohibited by law."

18 92. Defendants have a consistent and uniform policy, practice, and procedure of
19 forcing Plaintiffs and all other similarly situated aggrieved employees to agree in writing to
20 terms or conditions regarding restricting competition, that Defendants knew or should have
21 known to be prohibited by law.

22 93. Defendants' pattern, practice, and uniform administration of corporate policy
23 regarding illegal terms and conditions regarding restricting competition as described herein is
24 unlawful.

25 **L. PENALTIES ASSESSED UNDER LABOR CODE § 2699**

26 94. Under Labor Code § 2699(a) (which provides that any provision of the Labor
27 Code that provides for a civil penalty to be assessed and collected by the LWDA, or any of its
28 departments, divisions, commissions, board agencies or employees, such civil penalties may, as

1 an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
2 of himself or herself and other current or former employees) and Labor Code § 2699(f) (which
3 establishes a civil penalty for violations of all Labor Code provisions except those for which a
4 civil penalty is specifically provided), Plaintiff and all other similarly situated aggrieved
5 employees seek recovery of all applicable civil penalties, as follows:

- 6 a. As applicable, for civil penalties under Labor Code § 2699(f), for all
7 violations of the Labor Code except for those for which a civil penalty is
8 specifically provided, in the amount of \$100 for each aggrieved employee per
9 pay period for the initial violation; and \$200 for each aggrieved employee per
10 pay period for each subsequent violation;
- 11 b. As applicable, civil penalties under Labor Code § 558 (in addition to and
12 entirely independent and apart from any other penalty provided in the Labor
13 Code), for violations of Labor Code §§ 500-556, in the amount of \$50 for
14 each underpaid aggrieved employee for each pay period the aggrieved
15 employee was underpaid, and \$100 for each subsequent violation for each
16 underpaid employee for each pay period for which the employee was
17 underpaid;
- 18 c. As applicable, for civil penalties under Labor Code § 1197.1 (in addition to
19 and entirely independent and apart from any other penalty provided in the
20 Labor Code), for violations of Labor Code §§ 1194 and 1197, in the amount
21 of \$100 for each underpaid aggrieved employee for each pay period the
22 aggrieved employee was intentionally underpaid, and \$250 for each
23 subsequent violation for each underpaid aggrieved employees regardless of
24 whether the initial violation was intentionally committed;
- 25 d. As applicable, for civil penalties under Labor Code § 210 (in addition to and
26 entirely independent and apart from any other penalty provided in the Labor
27 Code), for each employee who is/was not paid wages in accordance with
28 Labor Code §§ 204 and 204b in the amount of a civil penalty of \$100 for each

aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

e. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

f. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

95. In addition, Plaintiff seek and is entitled to 75% of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and 25% to Plaintiffs and all other similarly situated aggrieved employees.

96. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs under Labor Code § 2699(g)(1) and any other applicable statute.

97. Labor Code § 2699.3(a) states in pertinent part, "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1)(A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

98. Labor Code § 2699.3(a) further states in pertinent part, "(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699."

1 99. Labor Code § 2699.3(c)(1) states in pertinent part, “A civil action by an aggrieved
2 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
3 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
4 commence only after the following requirements have been met: (1) (A) The aggrieved
5 employee or representative shall give written notice by online filing with the Labor and
6 Workforce Development Agency and by certified mail to the employer of the specific provisions
7 of this code alleged to have been violated, including the facts and theories to support the alleged
8 violation.”

9 100. Labor Code § 2699.3(c) further states in pertinent part, “(2)(A) The employer may
10 cure the alleged violation within 33 calendar days of the postmark date of the notice. The
11 employer shall give written notice by certified mail within that period of time to the aggrieved
12 employee or representative and the agency if the alleged violation is cured, including a
13 description of actions taken, and no civil action pursuant to Section 2699 may commence. If the
14 alleged violation is not cured within the 33-day period, the employee may commence a civil
15 action pursuant to Section 2699.”

16 101. Here, Plaintiffs’ civil action allege violations of provisions listed in Labor Code §
17 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such,
18 Labor Code §§ 2699.3(a) and 2699.3(c) apply to this action.

19 102. On November 6, 2023, Plaintiff complied with Labor Code §§ 2699.3(a) and
20 2699.3(c) in that Plaintiff gave written notice by online filing with the LWDA and by certified
21 mail to Defendants of the specific provisions of the Labor Code alleged to have been violated,
22 including the facts and theories to support the alleged violations. Attached hereto as Exhibit 1 is
23 Plaintiff’s LWDA letter.

24 103. As of January 10, 2024 (65 calendar days after Plaintiff’s November 6, 2023,
25 LWDA letter was filed online), Plaintiff has not received any notification that the LWDA
26 intended to investigate the alleged violations. As such, Plaintiff has complied with Labor Code §
27 2699.3(a) and have been given authorization therefrom to commence a civil action which
28 includes a cause of action under Labor Code § 2699.

104. Further, as of December 9, 2023 (33 calendar days after Plaintiff's November 6, 2023, LWDA letter was mailed to Defendants via certified mail), Plaintiff has not received from Defendant written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiff has complied with Labor Code § 2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action under Labor Code § 2699.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays:

As to the First Cause of Action for Penalties Under Labor Code § 2699:

a. As applicable, for civil penalties under Labor Code § 2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, for civil penalties under Labor Code § 558, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

i. For any initial violation, \$50 for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

ii. For each subsequent violation, \$100 for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

c. As applicable, for civil penalties under Labor Code § 1197.1, in addition to and entirely independent and apart from other penalties in the Labor Code, as follows:

- i. For any initial violation that is intentionally committed, \$100 for each aggrieved underpaid employee for each pay period for which the employee was underpaid;

ii. For each subsequent violation, regardless of whether the initial violation is intentionally committed, \$250 for each aggrieved underpaid employee for

each pay period for which the employee was underpaid;

d. As applicable, for civil penalties under Labor Code § 210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

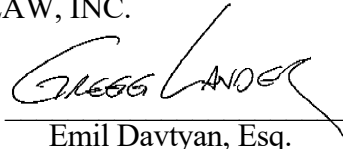
e. As applicable, for civil penalties under Labor Code § 226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

f. As applicable, for reasonable attorneys' fees and costs incurred under Labor Code § 2699(g)(1) and any other applicable statute; and

g. For such relief as this Court may deem just and proper.

Dated: January 11, 2024

D.LAW, INC.

By: 

Emil Davtyan, Esq.
Gregg Lander, Esq.
Vanessa M. Ruggles, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

November 6, 2023

Submitted at <https://www.dir.ca.gov> with \$75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: SCRIBEAMERICA, LLC (the “Employer”)

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: KAITLYN BALAN (the “Employee”), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code §§ 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, each Employer employed the Employee and all other aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employee and other aggrieved employees spent time under the Employer’s control, but were not paid therefore. For example, the Employer required the Employee and other aggrieved employees to complete work-related tasks at the beginning of their shifts and before clocking in. In addition, for a period of time, the Employer required the Employee and other aggrieved employees, at the beginning of their shifts before clocking in, to perform pre-shift Covid-19 temperature checks, which included waiting in line for the required temperature checks. In these circumstances, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer’s control, in violation of Labor Code §§ 510, 1194, 1197, and 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, when the Employer required the Employee and other aggrieved employees to work seven or more days in a row, the Employer failed to always pay for the first eight hours worked on the seventh day of a workweek at the rate of no less than one and one-half times the regular rate of pay and additionally failed to always pay for all work in excess of eight hours on any seventh workday of a workweek at the rate of no less than twice the regular rate of pay. As such, the Employer violated Labor Code §§ 510, et seq., and owes penalties under Labor Code §§ 2699(f) and/or 558.

Third, the Employer failed to always provide the Employee and other aggrieved employees with one day’s rest in every seven days of labor, and thus sometimes caused the Employee and other aggrieved employees to work more than six days in seven. As such, the Employer violated Labor Code § 552 and owes penalties under Labor Code §§ 2699(f) and/or 558.



Fourth, the Employee and other aggrieved employees were paid certain forms of non-discretionary pay, including but not limited to shift differential and training pay. However, the Employer did not include all forms of remuneration in the overtime pay rate when the Employee and other aggrieved employees worked overtime. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198, and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fifth, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and other aggrieved employees because Employer failed to relinquish all control and/or because meal breaks were missed, interrupted, short and/or late. The Employee and all other aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shift. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Sixth, the Employer failed to always authorize and permit paid rest breaks to the Employee and other aggrieved employees within the first four hours of their shift or major fraction thereof and each subsequent four hours worked thereafter or major fraction thereof. As such, the Employee and other aggrieved employees were not always authorized and permitted legally compliant rest breaks. The Employer did not pay a rest period penalty for any of these violations. As such, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Seventh, the Employee and other aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to expenses for the work-required use of their personal mobile devices and Covid protective masks. As such, the Employer violated Labor Code § 2802 by failing to reimburse the Employee and other aggrieved employees for all business expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Eighth, regarding wage statements, under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include certain information on a paystub. Here, because of the Employer allegedly failed to pay all wages as set forth above, improper wage statements were issued by the Employer to the Employee and other aggrieved employees, and the Employer has derivatively violated Labor Code § 226 and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Ninth, because the Employer failed to pay all wages as set forth above, the Employee and other aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. Therefore, because the Employer failed to pay all wages as set forth above, the Employer derivatively violated Labor Code §§ 201-202, and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Tenth, also regarding waiting time penalties, and in addition to the derivative violations of Labor Code § 203 above, the Employer did not pay the Employee and other separated aggrieved employees all final wages due and owing in a timely manner. For example, the Employee resigned on January 6, 2023, so her final wages were immediately due and owing.



However, the Employer willfully failed to pay the Employee's final wages for over 72 hours, providing checks for final wages on January 17, 2023. Therefore, because the Employer failed to pay all wages as set forth above, the Employer independently violated Labor Code §§ 201-202, and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Eleventh, and finally, the Employer forced the Employee and other aggrieved employees to agree in writing to terms or conditions regarding restricting competition, that the Employer knew or should have known to be prohibited by law. In violation of Labor Code § 432.5, the Employee and other aggrieved employees were forced to sign illegal competition-restricting agreements as a condition of their employment. As such, the Employer violated Labor Code § 432.5 and owes penalties under Labor Code § 2699(f).

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

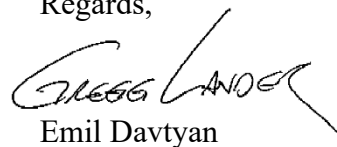
Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,



Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

cc: (via Certified Mail)

ScribeAmerica, LLC
1200 East Las Olas Boulevard, Suite 201
Fort Lauderdale, FL 33301