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

Matthew Cudney, as a Private Attorney
General on behalf of the State of California,

Plaintiff,

vs.

Paychex North America, Inc.; Paychex,
Inc.; and Does 1-20, inclusive,

Defendants.

Case No.: **24STCV00468**

REPRESENTATIVE ACTION COMPLAINT
FOR:

VIOLATION OF THE CALIFORNIA LABOR
CODE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (CAL. LABOR CODE §§ 2698,
ET SEQ.)

1 Plaintiff Matthew Cudney, as a Private Attorney General on behalf of the State of
2 California, hereby alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff brings this representative action against Defendants Paychex North
5 America, Inc. and Paychex, Inc. (“Defendant Paychex”), and Does 1 through 20, inclusive
6 (collectively, “Defendants”), as a Private Attorney General on behalf of the State of California.
7 Plaintiff seeks to recover civil penalties for all California-based aggrieved employees during the
8 “Relevant Time Period” (defined as one year and sixty-five days before the filing of this action
9 until the date of commencement of trial) who incurred wage and hour violations and losses as
10 hereinafter described.

11 2. Defendant Paychex is a Delaware corporation headquartered in Rochester, NY
12 with locations in 33 States and in Denmark and Germany. Defendant Paychex provides
13 integrated human capital management solutions for payroll, benefits, human resources, and
14 insurance services, and provides employment to non-exempt employees in California.

15 3. On November 1, 2023, Plaintiff gave notice of these claims to the California
16 Labor and Workforce Development Agency (“LWDA”) and to the agent for service of process
17 for each Defendant. Plaintiff has not received a response from the LWDA indicating that it
18 intends to investigate these claims. Accordingly, Plaintiff has exhausted all notice requirements
19 under the PAGA. Plaintiff asserts claims for civil penalties as a representative of the State of
20 California, as authorized by the Private Attorneys General Act of 2004 (“PAGA”), and to the
21 extent permitted by law, on behalf of aggrieved employees who held the positions identified
22 herein and suffered one or more of the violations alleged. Labor Code §§ 2698, *et seq.*

23 4. Through this action, Plaintiff alleges that Defendants have engaged in a
24 systematic pattern of wage and hour violations under the California Labor Code and IWC Wage
25 Orders.

26 5. Plaintiff is informed and believes, and thereon alleges, during the Relevant Time
27 Period, Defendants had a consistent policy of violating state wage and hour laws by, among other
28 things:

- (a) Failing to pay all wages for all hours worked, including minimum, regular, and overtime wages;
- (b) Failing to provide legally compliant off-duty meal periods or compensation in lieu thereof;
- (c) Failing to provide legally compliant duty-free rest breaks or provide compensation in lieu thereof;
- (d) Failing to provide accurate, itemized wage statements;
- (e) Failing to pay all final wages;
- (f) Failing to maintain accurate and complete records of hours worked and paid, and meal and rest period premiums owed; and
- (g) Violated California Labor Code § 925 by requiring employees who reside and work primarily in California to agree to litigate claims arising in California under the laws of New York State as a condition of employment.

6. Plaintiff brings this representative action seeking monetary relief against Defendants on behalf of himself and other aggrieved employees to recover, among other things, penalties, attorney's fees, costs and expenses pursuant to the PAGA.

JURISDICTION AND VENUE

7. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. The Superior Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes, except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. The Superior Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in the Superior Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

11. Plaintiff is a citizen of California and was employed by Defendants in California during the Relevant Time Period as alleged herein.

12. Plaintiff is informed and believes, and thereon alleges, that Defendants were and are a corporation doing business throughout the State of California, and at all times hereinafter mentioned, were and are an employer as defined in and subject to the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout this county and the State of California.

13. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

14. Plaintiff is informed and believes and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. Plaintiff is informed and believes and thereon alleges, that each of the Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

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GENERAL ALLEGATIONS

17. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

18. Defendants employed Plaintiff during the Relevant Time Period in a non-exempt position.

19. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

20. Through this action, Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive wages for all hours worked and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees were not paid wages (including minimum wages and overtime wages) when Defendants required Plaintiff and aggrieved employees to work off-the-clock. For example, Plaintiff regularly worked through his lunch break and was required to send emails, perform administrative work, and draft proposals before clocking in for and after clocking out of his shift. Defendants also failed to pay all overtime wages for all overtime hours worked because they prohibited Plaintiff and other aggrieved employees from working overtime through requiring overtime hours to be pre-approved and failed to pay overtime despite requiring employees to complete administrative work before clocking in for and after clocking out of their shifts. Defendants also failed to pay all overtime wages for all overtime hours worked because they failed to properly calculate the regular rate of pay for the off-the-clock work that Defendants required Plaintiff and aggrieved employees to perform. Moreover, because Plaintiff and other aggrieved employees earned non-discretionary compensation including commissions and

1 bonuses, Defendants failed to pay all overtime compensation for such commission and bonus
2 payments and failed to properly calculate the total overtime owed to Plaintiff and other aggrieved
3 employees for such payments. In addition, many aggrieved employees were misclassified by
4 Defendants as exempt from overtime. Those misclassified aggrieved employees earned a salary
5 and were not paid any overtime worked.

6 22. Plaintiff is informed and believes, and thereon alleges, Defendants failed to provide
7 Plaintiff and aggrieved employees timely, uninterrupted, off-duty meal periods of no less than thirty
8 minutes for each period of five hours worked. Plaintiff and aggrieved employees would also often
9 be required to work through meal periods, would be otherwise interrupted during their meal period,
10 or would take late meal periods without being paid meal period premiums at the regular rate in lieu.
11 In addition, Defendants misclassified many aggrieved employees as exempt from California's meal
12 break laws, and as a result of this misclassification, the misclassified aggrieved employees did not
13 receive meal breaks. These policies, among others, have resulted in a denial of these employees'
14 rights to 30-minute meal periods in violation of California law.

15 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and aggrieved employees were entitled to receive all required
17 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
18 regular rate of pay when they did not receive a timely meal period. In violation of the Labor Code
19 and IWC Wage Orders, Plaintiff and aggrieved employees did not receive all timely meal periods
20 or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of
21 pay when they did not receive a timely, uninterrupted meal periods.

22 24. Upon information and belief, Defendants failed to provide Plaintiff and aggrieved
23 employees timely, uninterrupted, on-the-clock rest period of no less than ten minutes for every four
24 hours worked, or every major fraction thereof. Defendants also routinely failed to provide Plaintiff
25 and aggrieved employees with a second rest period for shifts lasting longer than six hours, or a
26 third rest period for shifts lasting longer than ten hours. In addition, Defendants misclassified many
27 aggrieved employees as exempt from California's rest break laws, and as a result of this
28 misclassification, the misclassified aggrieved employees did not receive rest breaks. These

1 policies, among others, have resulted in a denial of these aggrieved employees' rights to a ten-
2 minute rest period in violation of California law.

3 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and aggrieved employees were entitled to receive all rest breaks
5 or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of
6 pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
7 and aggrieved employees did not receive all rest breaks or payment of one (1) additional hour of
8 pay at Plaintiff and aggrieved employees' regular rate of pay when a rest break was missed.

9 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage
11 statements that accurately showed their gross and net wages earned, inclusive dates of pay periods,
12 total hours worked, and all applicable hourly rates in effect and the number of hours worked at each
13 hourly rate in accordance with California law. In violation of the Labor Code, Plaintiff and
14 aggrieved employees were not provided with accurate itemized wage statements. Moreover,
15 Defendants also failed to provide accurate wage statements by including two different employers
16 on each wage statement of the aggrieved employees: "Paychex, Inc." and "Paychex North America,
17 Inc.," which is inherently confusing for aggrieved employees, and which violates Labor Code
18 section 226.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and aggrieved employees who separated from Defendants were
21 entitled to timely payment of wages upon separation of employment. In violation of the California
22 Labor Code, Plaintiff and aggrieved employees did not receive payment of all wages including, but
23 not limited to, meal period premiums, regular, minimum, and overtime wages, and paid leave
24 within the required time during their employment and upon separation of their employment.

25 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that an employer shall not require an employee who primarily resides and
27 works in California, as a condition of employment, to agree to a provision that would require the
28 employee to adjudicate outside of California a claim arising in California or deprive the employee

1 of the substantive protection of California law with respect to a controversy arising in California,
2 and that any provision of a contract requiring such is voidable by the employee, and if a provision
3 is rendered void at the request of the employee, the matter shall be adjudicated in California and
4 California law shall govern the dispute. In violation of the California Labor Code, Defendants
5 required Plaintiff and other aggrieved employees to agree that the laws of the State of New York
6 govern all actions arising out of employment with Defendants as part of Defendants' Sales
7 Representative Incentive Plan Agreements, despite Plaintiff and aggrieved employees primarily
8 residing in and working in the State of California. As such, Plaintiff, on behalf of himself and all
9 other aggrieved employees of Defendants, requests that the governing law provision of all such
10 Payment Incentive Plan Agreements Defendants shall be rendered void and that this matter be
11 adjudicated in California and governed by California law.

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known they had a duty to compensate Plaintiff and aggrieved employees, and
14 Defendants had the financial ability to pay such compensation but willfully, knowingly and
15 intentionally failed to do so all in order to increase Defendants' profits.

16 **FIRST CAUSE OF ACTION**

17 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

18 30. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
19 though fully set forth herein.

20 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
21 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
22 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
23 violation of the code may, as an alternative, be recovered through a civil action brought by an
24 aggrieved employee on behalf of themselves or herself and other current or former employees
25 pursuant to the procedures specified in Labor Code § 2699.3.

26 32. For all provisions of the Labor Code except those for which a civil penalty is
27 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violations and two

1 hundred dollars (\$200.000) for each aggrieved employee per pay period for each subsequent pay
2 period in which Defendants violated these provisions of the Labor Code.

3 33. Defendants' conduct with respect to Plaintiff and other aggrieved employees
4 violates numerous Labor Code sections including, but not limited to, the following:

- 5 a. Violation of Labor Code §§ 218, 510, 1194, 1194.2, 1197, 1197.1, 1198, and
6 1199(c) for failure to pay all wages for all hours worked, including minimum,
7 regular, and overtime wages;
- 8 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
9 or compensation in lieu thereof;
- 10 c. Violation of Labor Code § 226.7 for failure to authorize or permit rest breaks
11 or provide compensation in lieu thereof;
- 12 d. Violation of Labor Code § 226 for failure to provide accurate, itemized wage
13 statements;
- 14 e. Violation of Labor Code §§ 201-204, 256, 1198, and 2699 for failure to timely
15 pay all wages due during and upon termination of employment;
- 16 f. Violation of Labor Code §§ 1174, 1174.5, 1175, and 1198 for failure to
17 maintain accurate records for employee hours worked and/or paid including
18 meal and rest period premiums; and
- 19 g. Violation of Labor Code § 925 for requiring employees who reside and work
20 primarily in California to agree to litigate claims arising in California under
21 the laws of New York State as a condition of employment.

22 34. Plaintiff is an "aggrieved employee" because he was employed by the alleged
23 violators and had one or more of the alleged violations committed against him, and therefore is
24 properly suited to represent the interests of all other aggrieved employees.

25 35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
26 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and
27 all other aggrieved employees under PAGA.
28

36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties for violations of the Labor Code sections cited above.

37. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all other aggrieved employees, prays for judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees;
2. For injunctive relief pursuant to California Labor Code § 925;
3. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and
4. For such other relief as the Court deems just and proper.

Dated: January 8, 2024

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By:

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