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

JACOB TERRY,

Plaintiff,

vs.

ABC PHONES OF NORTH CAROLINA,
INC. and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **24STCV12066**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA")**

COMES NOW Plaintiff, JACOB TERRY (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants ABC PHONES OF NORTH CAROLINA, INC., and DOES 1 to 25, inclusive (hereinafter collectively “ABC” or “Defendant(s)”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ABC PHONES OF NORTH CAROLINA, INC. is a North Carolina corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent of
2 his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working at ABC in Sales on or around October 2023 and is still
5 currently employed. Plaintiff was and is classified as an hourly, non-exempt employee.

6 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
7 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
8 Security Services USA, Inc., an onsite security provider. After about a year of employment,
9 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
10 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
11 termination of employment and weekly payment of wages to temporary employees. The trial
12 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
13 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
14 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
15 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
16 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
17 PAGA representative to sue for violations that the representative has personally suffered. The
18 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
19 and others. The statute also states that an “aggrieved employee” is “any person who was
20 employed by the alleged violator and against whom one or more of the alleged violations was
21 committed.” Because at least one of the violations that Huff had alleged had affected him
22 personally, the Court of Appeal denied Securitas’ motion.
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26 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
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1 other employees, it allows for suits broader than the specific violations the named employee
2 experienced. Therefore, even if the employee did not personally experience the Labor Code
3 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
4 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
5 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
6 duties.

7 9. It is Plaintiff's position that ABC has violated the following Labor Code Sections
8 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
9 hourly employees who worked for ABC at ALL of their locations in the State of California
10 during the relevant PAGA period.

11 10. ABC violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
12 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
13 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
14 ABC had a company policy wherein, they would disproportionately round down the number of
15 hours worked, resulting in "time shaving" and further resulting in aggrieved employees not
16 being paid for all hours worked. Furthermore, since Plaintiff and others worked through their
17 meal periods while "off the clock" and while clocked out, they were not compensated for all
18 hours worked, which would be akin to a minimum wage violation. Furthermore, ABC did not
19 pay proper reporting time pay to employees.

20 11. Due to the above "off the clock" violations, ABC also violated Labor Code §510
21 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
22 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
23 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours,
24 including the "off the clock" work and time shaving, entitled them to overtime compensation,
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1 however, ABC did not compensate its hourly, non-exempt employees with the correct amount
2 of overtime due to the “off the clock” work and time shaving as described above. Furthermore,
3 ABC failed to include bonuses/incentive payments in calculating employees’ regular rate of
4 pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and
5 bonus payments were also not factored into employees’ regular rate for purposes of receiving
6 meal and rest break premiums per the Ferra v. Loews case. Furthermore, Plaintiff and others
7 would not be paid the proper overtime when working for 7 straight days.

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9 12. ABC also violated Labor Code § 226.7 and the appropriate Industrial Welfare
10 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and other similarly
11 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
12 majority portion thereof, throughout their employment. ABC did not completely relieve
13 Plaintiff and others of all duty during said rest periods. ABC did not pay to Plaintiff and others
14 one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one
15 or more statutory rest periods was not provided. It was not part of the company policy for
16 employees such as Plaintiff to consistently take at least UNINTERRUPTED two rest breaks
17 per shift. The concept of uninterrupted rest breaks was not consistently implemented as it was
18 not company policy, especially because Plaintiff had to tend to customers during statutory
19 breaks due to the company being understaffed.

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21 13. As such, the culture as well as the policies and procedures of ABC did not lend itself to
22 the employees receiving consistent statutory rest breaks wherein, they were relieved of all
23 work duties. The environment at ABC was not conducive to receiving multiple statutory rest
24 breaks under California law and timely, statutory rest breaks were not authorized or enforced.

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26 14. ABC violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
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Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. ABC did not completely relieve Plaintiff and other employees of all duty during said meal periods. ABC did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would not always be able to receive timely meal periods before the 5th hour worked that were actually uninterrupted. Due to understaffing, being busy with customers, and not wanting customers to complain about lack of service/help, Plaintiff and others would simply take their meal breaks late (after the 5th hour worked) or would have to interrupt their meal breaks to tend to customers. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not always enforced by ABC. Consequently, it was the normal practice and custom of ABC not to authorize, permit, and enforce timely statutory meal periods. If ABC had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. Even if Plaintiff's and others' shifts were less than 6 hours, Plaintiff did not sign a meal period waiver wherein he was able to revoke the agreement. If ABC had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow Plaintiff and others to revoke such an agreement even if it was signed. As such, Plaintiff and others did not receive statutory, timely meal periods during their employment. To the extent that ABC argues that employees receive

1 meal break premium pay for missed meal periods, that argument is inconsequential for PAGA
2 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of
3 whether an employee received the premium payment for a missed, short, or interrupted meal
4 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not
5 give employers a lawful choice between providing *either* meal and rest breaks *or* an additional
6 hour of pay.” *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256
7 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer
8 has still committed a violation even if the remedy for the violation has been paid. *See Wert v.*
9 *U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work
10 environment and culture at ABC was not conducive to receiving consistent, timely, statutory
11 meal breaks under California law. Moreover, any meal or rest break premiums paid were not
12 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
13 payments as well as overtime compensation.

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15 15. Furthermore, during the relevant time period, and due to the above labor code
16 violations, ABC failed to pay Plaintiff and other similarly situated aggrieved employees all
17 wages due to them within any time period specified by California Labor Code section 204.
18 Since Plaintiff was personally not compensated for all hours worked and did not receive all
19 meal and rest break premium payments for missed, late, or short meal/rest periods, ABC would
20 have certainly violated section 204 as to Plaintiff. ABC was also in violation of California
21 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
22 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
23 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal
24 and rest breaks, all deductions, the correct start and end of the pay period, all employee
25 identifying information, the correct and complete name and address of the legal employer, and
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1 reimbursement for business expenses, among others. As such, ABC did not provide Plaintiff
2 and other similarly situated aggrieved employees with complete, accurate itemized wage
3 statements.

4 16. During the relevant time period, ABC also failed to keep accurate and complete payroll
5 records showing the actual hours worked per day and the wages paid to Plaintiff and others
6 pursuant to California Labor Code sections 1174(d).

7 17. ABC also violated Labor Code § 203 because it willfully failed to pay other similarly
8 situated aggrieved employees earned and due wages upon separation of employment, either
9 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
10 unpaid wages include compensation for all hours worked, including minimum wages, overtime
11 compensation, and premium pay for missed meal and rest breaks.

12 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not fully reimbursed by ABC. These
14 costs include, but are not limited to, use of personal cell phones for work purposes and
15 uniforms. Accordingly, ABC was in violation of California Labor Code sections 2800 and
16 2802.

17 19. Furthermore, ABC did not provide proper and correct/accurate sick pay that was also
18 delineated on employee pay stubs and also failed to provide proper sick leave in violation of
19 Labor Code sections 233 and 246. Moreover, ABC violated the applicable Industrial Welfare
20 Commission Wage Order no. 4-2001/7-2001, sections 13 and 14 in that there was no adequate
21 rest break facilities and seating for the employees.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and IWC 4-2001/7-2001)

(Plaintiff against ABC and all DOE defendants)

20. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

21. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 16, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

22. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

23. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants’ violations of the Labor Code.

24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

25. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for ABC in the State of California during the applicable PAGA Period.

1 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
2 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
3 numerous provisions of the California Labor Code as alleged in this Complaint.

4 27. Plaintiff therefore has exhausted all administrative remedies required of him under
5 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
6 this cause of action and pursue penalties in a representative action for Defendants' violations of
7 the Labor Code.

8 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
9 Defendants for violating the Labor Code.

10 29. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
11 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
12 seeking individual penalties/victim specific relief or underpaid wages for herself or other
13 employees under this specific PAGA cause of action.

14 30. Specifically, Plaintiff seeks penalties under California Labor Code
15 section 2699, for the following:

16 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
17 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
18 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 4/7) violated
19 based on the facts alleged in this Complaint.

20 31. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
21 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
22 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
23 limits of this Court.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
26 follows:

- 27 1. For the imposition of civil penalties;
- 28 2. For maximum civil penalties available under Labor Code Section 2699 against

1 Defendants in a manner and amount authorized by that statute, as described more
2 particularly in the Complaint and representative PAGA claims;

3 3. For all costs and disbursements incurred in this suit;

4 4. Reasonable attorney's fees where available by law, including but not limited to,
5 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
6 1021.5, and/or other applicable laws; and

7 5. For such other and further relief as this Court may deem proper.
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9 DATED: May 14, 2024

MESSRELIAN LAW INC.

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11 By 
12 Harout Messrelian, Esq.
13 Attorneys for Plaintiff Jacob Terry
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