Electronically FILED by Superior Court of California, County of Riverside on 07/17/2024 05:55 PM
Case Number CVRI2403906 0000099332709 - Jason B. Galkin, Executive Officer/Clerk of the Court By Olga Ramirez-Chavez, Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ALEXANDRA WOOD, Plaintiff, vs. TMCSF, INC.; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: CVRI2403906 **COMPLAINT FOR DAMAGES FOR:** **1. PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

COMES NOW Plaintiff, ALEXANDRA WOOD (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Riverside in this judicial district because Defendants TMCSF, INC.; and DOES 1 to 25, inclusive, do business in the County of Riverside and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Riverside is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $35,000.

2. Plaintiff is a female resident of the County of Riverside, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant TMCSF, INC (hereinafter referred to as "TMCSF") is and was a California corporation, doing business in Riverside County, California as Riverside Harley-Davidson, 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 under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working at TMCSF on or around 2022 in the Marketing Department. Plaintiff was seemingly classified as an hourly, non-exempt employee. Plaintiff's employment ended on or around March 29, 2024.

7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was

committed." Because at least one of the violations that Huff had alleged had affected her personally, the Court of Appeal denied Securitas' motion.

8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties who worked for TMCSF at any of their locations in California during the relevant PAGA period. It is Plaintiff's position that TMCSF has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for TMCSF at their various locations in the State of California during the relevant PAGA period.

9. TMCSF violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because TMCSF had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and since Plaintiff and others worked through their meal periods while "off the clock", they were not compensated for all hours worked, which would be akin to a minimum wage violation. Moreover, TMCSF failed to provide its employees with proper and accurate reporting time pay. In terms of the "off the clock" work, it is important to note that Plaintiff would often engage in work-related duties and activities AFTER clocking out and was unequivocally not paid for this time.

10. Due to the above "off the clock" violations, TMCSF also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, TMCSF did not compensate its hourly, non-exempt employees with overtime or the correct amount of overtime due to the "off the clock" work and time shaving/rounding as described above and due to overall company policy. Furthermore, TMCSF failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

11. TMCSF also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7/9 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. TMCSF did not completely relieve Plaintiff and others of all duty during said rest periods. TMCSF did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Plaintiff to take at least two timely, uninterrupted rest breaks per shift. The concept of uninterrupted rest breaks multiple times per shift, which were also timely, was not consistently implemented, especially when there were events occurring on Saturdays and Sundays. As such, the culture as well as the policies and procedures of TMCSF did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at TMCSF was not conducive to receiving multiple statutory

rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

12. TMCSF violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7/9 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. TMCSF did not completely relieve Plaintiff and other employees of all duty during said meal periods. TMCSF 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. Plaintiff and other hourly, non-exempt employees would not consistently receive timely, uninterrupted meal breaks which were before the 5th hour. In addition, there were numerous instances wherein Plaintiff and others would not receive meal breaks or would just work through them. The company had a policy and practice in which they would have employees fill out a "Employee Time Card Certification", however, the person in charge of having employees fill out those certifications would coach employees on what to write in the event that a meal period was not taken. For example, the company would have employees write that the employee voluntarily chose to work through the break or opted out of taking the break or chose to skip lunch and it was ok. The latter was meant to try to insulate the company from paying meal period premiums for missed, short, late, or interrupted meal periods, which happened quite often. Moreover, Plaintiff and others did not receive a second meal period when working shifts of over 10 hours (Plaintiff would work 12 hours at times). Like the rest breaks, receiving a thirty-minute <u>uninterrupted</u> and <u>timely</u> meal break was not part of the company culture and was not consistently enforced by TMCSF. Consequently, it was the normal practice and custom of TMCSF not to consistently authorize, permit, and enforce timely statutory meal

periods. If TMCSF 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. If TMCSF 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 her from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that TMCSF argues that Plaintiff and others were paid to work through their meal period, this argument is not compelling due to the position that there was no valid meal period waiver in place and even if there was, it is still a violation to prevent an employee from taking a meal break in order to rest and recover. To the extent that TMCSF argues that employees receive meal break premium pay for missed, late or short meal and rest periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at TMCSF was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

13. Furthermore, during the relevant time period, and due to the above labor code violations, TMCSF failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. TMCSF was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, TMCSF did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

14. During the relevant time period, TMCSF also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d). TMCSF also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

15. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by TMCSF. These costs include, but are not limited to, use of personal cell phones for work purposes, among

others. During her employment, Plaintiff needed to utilize her personal phone for work purposes, but was not reimbursed. Accordingly, TMCSF was in violation of California Labor Code sections 2800 and 2802.

16. Furthermore, TMCSF did not provide proper and correct/accurate sick pay that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-2001/7-2001/9-2001.

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 Wage Orders 4-2001/7-2001/9-2001)

(Against All Named Defendants and all DOE Defendants)

17. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.

18. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

19. 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.

20. Plaintiff therefore has exhausted all administrative remedies required of her 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.

21. 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.

22. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former hourly, non-exempt employees who worked for TMCSF in the State of California during the PAGA period.

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

24. Plaintiff therefore has exhausted all administrative remedies required of her 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.

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

26. California Labor Code section 558 establishes a civil penalty as follows: Any employer or other person action 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 (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid …; (2) for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid …;

27. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by

law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages under this particular cause of action.

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

Violations of 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, via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 4/7/9) violated based on the facts alleged in this Complaint.

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

PRAYER FOR RELIEF

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

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and

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5. For such other and further relief as this Court may deem proper.

DATED: July 17, 2024

MESSRELIAN LAW INC.

By______________________________

Harout Messrelian, Esq.

Attorneys for Plaintiff Alexandra Wood