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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ZENNY RIVAS BORGE, Plaintiff, vs. VIE DE FRANCE YAMAZAKI, INC.; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: 24STCV22387 **COMPLAINT FOR DAMAGES FOR:** **1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

COMES NOW Plaintiff, ZENNY RIVAS BORGE (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 VIE DE FRANCE YAMAZAKI, INC. and DOES 1 to 25, inclusive (hereinafter collectively "VIE DE FRANCE" 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 female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant VIE DE FRANCE YAMAZAKI, INC. is a Virginia 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 under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

6. Plaintiff started working for VIE DE FRANCE on or around 2023 and is currently employed. During her employment tenure, Plaintiff was misclassified as a salaried, exempt employee and her latest rate of pay was $72,400 per year. Plaintiff is not a union employee.

7. Under California law, in order for Plaintiff to be an exempt employee, Plaintiff would have to fit in one of the following categories: Executive, Professional, or Administrative.

8. Plaintiff did not fit under the Executive exemption because she was NOT "primarily engaged in" (more than 50%) duties which met the test of exemption and did not have the ability to hire anyone as that was solely within the purview of Human Resources. Work tasks are either exempt or nonexempt as determined by the objective purpose for which the tasks are undertaken. *See* Heyen v. Safeway Inc. (2013) 216 CA4th 795, 826-827. In the Heyen case, *supra*, a grocery store assistant manager who spent more than half of her time bagging groceries or checking out customers was deemed to be engaged in nonexempt activities despite concurrently watching over her subordinates' work.

9. Plaintiff did not fit under the Professional Exemption because her work did not fit into one of the enumerated professions and is not considered a "learned or artistic profession." The Administrative Exemption also does not apply to Plaintiff either.

10. VIE DE FRANCE has committed the below labor code violations against Plaintiff and other hourly, non-exempt employees. 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 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 him personally, the Court of Appeal denied Securitas' motion.

11. In sum, since PAGA allows Plaintiffs to bring suit on behalf of 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 in the state of California, including all hourly non-exempt employees, that were paid on an hourly basis or who were misclassified and who worked for VIE DE FRANCE in the state of California during the relevant PAGA period. Note that even if Plaintiff was properly classified as a salaried, exempt employee, she would still have standing to bring this

representative PAGA action on behalf of all other employees based on suffering at least a business expense reimbursement violation and a paystub violation.

12. VIE DE FRANCE did not provide Plaintiff and other aggrieved employees with compensation for all hours worked and did not pay Plaintiff and others the minimum wages to which they were entitled for work performed "off the clock" pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others also worked "off the clock" and were not paid for all hours worked because VIE DE FRANCE had a company policy wherein they would disproportionately round down the number of hours worked by Plaintiff and other aggrieved employees, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. In addition, VIE DE FRANCE did not provide reporting time to pay employees. Moreover, and to the extent that meal periods were interrupted by work obligations and work duties, that would be akin to a minimum wage violation. For Plaintiff specifically, and because she was misclassified, Plaintiff was not paid for being "on call" as Plaintiff' personal cell phone was provided to other employees so that they can get a hold of Plaintiff whenever necessary, even outside of work hours.

13. VIE DE FRANCE also violated Labor Code §510 because it failed to pay the hourly employees and the misclassified employees such as Plaintiff the correct amount of overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. The latter is due to the "off the clock" work and time shaving as described above. Moreover, Plaintiff worked 6 days per week at times for at least 9 hours per day (not including the work from home or other "off the clock work"). As such, Plaintiff was entitled to significant overtime compensation but was not paid as such due to being misclassified. Moreover, VIE DE FRANCE did not factor in the commission payments/incentive payments/sick pay/shift differentials and/or any bonuses in deciphering

hourly employees' regular rate of pay for purposes of figuring out the overtime rate of pay. Additionally, the incentive and bonus payments/sick pay/shift differentials were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

14. VIE DE FRANCE violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial Welfare Commission (IWC) Wage Order (no. 1 or 4 or 7) because it failed to provide Plaintiff and other aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. VIE DE FRANCE did not completely relieve Plaintiffs of all duties during said meal periods. VIE DE FRANCE did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. Due to being misclassified, Plaintiff simply was not able to take meal breaks that were before the 5th work and uninterrupted. It simply did not exist. For the other hourly employees, the meal breaks would often be late and/or interrupted by work obligations and were not properly enforced. Furthermore, hourly, non-exempt employees did not receive a second meal break on those days wherein they worked more than 10 hours. Additionally, the incentive and bonus payments/sick pay were also not factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

15. If VIE DE FRANCE had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally have worked more than a 6-hour shift. If VIE DE FRANCE had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods or stay on the premises during 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. VIE DE FRANCE could have easily hired more staff, which would have allowed Plaintiff to take a timely, uninterrupted break and be relieved of all work duties. If VIE DE FRANCE argues that Plaintiff and others were actually paid for their meal breaks, the latter would not mean there was no violation since Plaintiff and others were essentially denied any meal breaks for them to rest and get something to eat. The solution for VIE DE FRANCE is not to keep their employees from taking meal periods, but to hire additional staff and "breakers" to make sure that their employees receive statutory breaks. To the extent that VIE DE FRANCE argues that employees receive meal break premium pay for missed meal 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 VIE DE FRANCE was not conducive to receiving consistent, **timely**, **uninterrupted** 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/sick pay/shift differentials.

16. VIE DE FRANCE violated Labor Code § 226.7 as well as the applicable IWC Wage Order (no. 1 or 4 or 7) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion

thereof, throughout their employment. VIE DE FRANCE did not completely relieve Plaintiff of all duty during said rest periods. VIE DE FRANCE did not pay to Plaintiff 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. Due to being misclassified, Plaintiff did not take multiple 10-minute rest periods throughout her shift wherein she was relieved of all work duties. Moreover, for the employees that were properly classified as non-exempt employees, it was not company policy and not part of the company culture for employees to take full rest breaks, especially two daily rest breaks of at least 10 minutes each (for a full shift) wherein they were fully relieved of their work duties. The issue once again had to do it understaffing and having to tend to work deadlines, especially in the industrial production setting. As such, the culture and environment at VIE DE FRANCE did not lend itself to the employees receiving statutory breaks wherein they were relieved of all work duties. It was the normal practice and custom of VIE DE FRANCE not to authorize, permit, and enforce statutory rest periods. As such, the environment and culture at VIE DE FRANCE was not conducive to receiving statutory rest breaks under California law.

17. Furthermore, during the relevant time period, and due to the aforementioned violations, VIE DE FRANCE 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. VIE DE FRANCE 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, premium pay for missed meal and rest breaks, all deductions, net wages earned, the correct name and address of the employer, employee identifying information, the correct start and end of the pay periods, and reimbursement for business expenses, among others. As such,

VIE DE FRANCE did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

18. VIE DE FRANCE violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After aggrieved employees stopped working at VIE DE FRANCE and after their employment with VIE DE FRANCE ended, VIE DE FRANCE failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include the unpaid minimum wages/compensation for all hours worked, "off the clock" work, overtime, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

19. It is Plaintiff's contention that the rounding/time shaving, and statutory meal and rest period violations would trigger penalties under Labor Code sections 203, 204, and 226 per Naranjo v. Spectrum Security Services Inc. (2022) 13 Cal. 5^{th} 93.

20. During the relevant time period, VIE DE FRANCE also failed to keep accurate and complete payroll records showing the correct wages paid to Plaintiff and other aggrieved employees, pursuant to California Labor Code sections 1174(d).

21. Moreover, during the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by VIE DE FRANCE. These costs include, but are not limited to, use of their personal cell phones for work purposes. Plaintiff and others were also not reimbursed for their uniforms. Moreover, Accordingly, VIE DE FRANCE was in violation of California Labor Code sections 2800 and 2802.

22. Furthermore, VIE DE FRANCE 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 was no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 1-2001/4-2001/7-2001.

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, 1197, 1197.1, 1198, 2800, 2802 and IWC Wage Orders)

(Plaintiff against VIE DE FRANCE and all DOE defendants)

23. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

24. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated May 24, 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.

25. 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.

26. 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.

27. 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 other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

28. 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 all employees, including other current and former employees, including all current and former hourly, non-exempt employees and those who were misclassified as salaried exempt employees and who worked for VIE DE FRANCE in the State of California during the applicable PAGA Period.

29. Based on the acts alleged above, Plaintiff, on behalf of 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.

30. 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.

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

32. 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 penalties/victim specific relief or underpaid wages for herself or other employees under this specific PAGA cause of action.

33. 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, 1197, 1197.1, 1198, 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 1/4/7) violated based on the facts alleged in this Complaint.

34. 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.

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

2. For the imposition of civil penalties;
3. 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;
4. For all costs and disbursements incurred in this suit;
5. 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
6. For such other and further relief as this Court may deem proper.

DATED: September 3, 2024

MESSRELIAN LAW INC.

By______________________
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Attorneys for Plaintiff Zenny Rivas Borge