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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOHNPAUL SILVA, on behalf of other
members of the general public similarly
situated;

Plaintiff,

v.

TMT COMMUNICATIONS INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CIVSB2429747

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE
§ 2698, et seq. (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

1 Plaintiff JOHNPAUL SILVA ("Plaintiff") hereby submits this Complaint against
2 Defendant TMT COMMUNICATIONS INC. and DOES 1 through 100, inclusive (collectively,
3 "Defendants") as an exclusively representative action on behalf of other current and former
4 aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code § 2698, *et*
7 *seq.* (the Private Attorneys General Act of 2004 ("PAGA")) for Defendants' violations of Labor
8 Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551,
9 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders. Plaintiff
10 seeks only to prosecute his non-individual PAGA claims and does not seek to prosecute any
11 individual PAGA claims against Defendants.

12 2. This Complaint challenges Defendants' systemic illegal employment
13 practices resulting in violations of the stated provisions of the Labor Code against the identified
14 group of employees.

15 3. Plaintiff is informed and believes and thereon alleges Defendants jointly
16 and severally acted intentionally and with deliberate indifference and conscious disregard to the
17 rights of all employees in (1) failing to properly calculate and pay all minimum and overtime
18 wages; (2) failing to pay all meal period wages and rest break wages; (3) failing to provide
19 accurate wage statements; (4) failing to pay all wages due and owing during employment and
20 upon termination of employment; and (5) failing to reimburse all necessary business expenses.

21 **JURISDICTION AND VENUE**

22 4. This action is brought pursuant to PAGA, which deputizes any aggrieved
23 employee to prosecute Labor Code violations as a proxy, or "private attorney general," of the
24 State of California. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits
25 of the Superior Court and will be established according to proof at trial.

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11. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

12. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

13. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

CAUSE OF ACTION

(Violation of Labor Code § 2698, et seq. (“PAGA”))

(Against TMT COMMUNICATIONS INC. and DOES 1 through 100)

14. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 13, and each and every part thereof with the same force and effect as though fully set forth herein.

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1 **15.** The Private Attorneys General Act of 2004 (“PAGA”) expressly
2 establishes that any provision of the California Labor Code which provides for a civil penalty to
3 be assessed and collected by the California Labor and Workforce Development Agency
4 (“LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for
5 a violation of the California Labor Code, may be recovered through a civil action brought by an
6 aggrieved employee on behalf of other current or former employees.

7 **16.** On June 19, 2024, Plaintiff provided written notice to the LWDA and
8 Defendants of the specific provisions of the Labor Code he contends were violated, and the
9 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference
10 is a copy of the written notice to the LWDA. Plaintiff believes that on or about August 23, 2024,
11 the sixty-five (65) days’ notice period expired as to the LWDA and all Defendants, and the
12 LWDA did not take any action to investigate or prosecute this matter. Thus, Plaintiff exhausted
13 his administrative remedies.

14 **17.** Plaintiff and the other hourly-paid or non-exempt employees are
15 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current
16 or former hourly-paid or non-exempt employees of Defendants who worked for Defendants at
17 any time during the period from June 19, 2023, to the present, and one or more of the alleged
18 violations was committed against them.

19 **Failure to Pay Minimum and Overtime Wages**

20 **18.** At all times relevant herein, Defendants were required to compensate their
21 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
22 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
23 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

24 **19.** As a policy and practice, Defendants failed to compensate aggrieved
25 current and former employees for all hours worked, resulting in a failure to pay all minimum
26 wages and overtime wages, where applicable.

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20. In accordance with the mandates of Labor Code §§ 226.7 and 512,

21. As a policy and practice, Defendants failed to provide aggrieved current employees with legally mandated meal periods and rest breaks and failed to pay proper compensation for this failure.

22. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code § 204.

23. As a policy and practice, Defendants failed to pay aggrieved current and former employees all wages due and owing them within the required time period.

Failure to Timely Pay Wages Upon Termination

24. At all times relevant herein, Defendants were required to pay their wages owed in a timely fashion at the end of employment pursuant to California 201 to 204.

25. As a result of Defendants' Labor Code violations alleged above, [redacted] led to pay aggrieved former employees their final wages pursuant to Labor Code [redacted] and accordingly owe waiting time penalties pursuant to Labor Code § 203.

26. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

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27. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Reimburse Business Expenses

28. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§ 2800 and 2802.

29. As a policy and practice, Defendants failed to pay aggrieved current and former employees all business expenses incurred and owing them within the required time period.

Penalties

30. Pursuant to California Labor Code § 2699, Plaintiff, on behalf of current and former aggrieved employees of Defendants and exclusively as a proxy of the State of California, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

- a.** Penalties under California Labor Code § 2699 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b.** Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

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3. For such other and further relief the court may deem just and proper.

Dated: September 30, 2024

JUSTICE LAW CORPORATION

By:



Douglas Han
Shunt Tatavos-Gharajeh
Jamie Nguyen
Attorneys for Plaintiff

EXHIBIT 1

June 19, 2024

BY U.S. MAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: TMT COMMUNICATIONS INC.

Dear Representative:

We have been retained to represent Johnpaul Silva against TMT Communications Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer or managing agent acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 1-20¹ for violations of California wage-and-hour laws (hereinafter referred to as "TMT Communications Inc.").

Mr. Silva is pursuing his California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Silva may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

TMT Communications Inc. is a California corporation located at 337 N Vineyard Avenue #320, Ontario, CA 91764.

TMT Communications Inc. employed Mr. Silva as an hourly-paid non-exempt Sales position within one year of the date of this letter (until in or around January of 2024) in the State of California. TMT Communications Inc. directly controls the wages, hours and/or working conditions of Mr. Silva and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

¹ Mr. Silva does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Silva will amend this notice when the true names and capacities are known. Mr. Silva is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Silva and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Mr. Silva may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of TMT Communications Inc.

TMT Communications Inc. failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly compensate minimum and overtime wages, failed to properly provide legally mandated meal and rest breaks or pay premium wages in lieu thereof, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751, an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Silva has standing to pursue penalties on behalf of the state for violations affecting all aggrieved employees at TMT Communications Inc., regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

TMT Communications Inc. has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1199, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay time-and-a-half or double-time overtime wages and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Silva and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. TMT Communications Inc. failed to compensate Mr. Silva and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. TMT Communications Inc. also failed to include non-discretionary bonuses into aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Mr. Silva and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, TMT Communications Inc. failed to pay aggrieved employees paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at a non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512(a) require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, TMT Communications Inc. routinely required Mr. Silva and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with TMT Communications Inc.'s policies and expectations and prepare orders. TMT Communications Inc. failed to provide coverage to Mr. Silva and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, TMT Communications Inc. failed to authorize and permit aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, TMT Communications Inc. failed to compensate Mr. Silva and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." TMT Communications Inc. required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." TMT Communications Inc. required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits their employment, their wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours' previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, TMT Communications Inc. failed to pay Mr. Silva and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 202 and therefore is liable under California Labor Code sections 203 and 210.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, TMT Communications Inc. failed to pay Mr. Silva and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204, and is therefore liable under California Labor Code section 210.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, TMT Communications Inc. did not provide Mr. Silva and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from TMT Communications Inc. were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Silva and other aggrieved employees, (2) total hours worked by Mr. Silva and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by aggrieved employees, (4) all deductions for Mr. Silva and other aggrieved employees, (5) net wages earned by Mr. Silva and other aggrieved employees, (6) the inclusive dates of the period for which aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of their 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 (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by aggrieved employees.

California Labor Code section 558 allows recovery of penalties. Pursuant to the code, (a) Any employer or other person acting 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 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Silva and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, TMT Communications Inc. failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid to Mr. Silva and other aggrieved employees.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, TMT Communications Inc. did not provide Mr. Silva and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of their job duties or in direct consequence of their obedience to the directions of the employer. During their employment, Mr. Silva and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by TMT Communications Inc., including for using their personal cellular phones and vehicles for work purposes.

We believe that Mr. Silva and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code sections 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1199, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether the California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Silva will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of TMT Communications Inc. within one year of the date of this letter, as allowed by law.

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LWDA
June 19, 2024
Page 7 of 7

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Michelle Vachba
c/o TMT Communications Inc.
337 N Vineyard Avenue #320,
Ontario, CA 91764
Agent for Service of Process for TMT Communications Inc.

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is nalonsoesteban@justicelawcorp.com

On October 15, 2024, I served the foregoing document described as

COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE § 2698, et seq. (PRIVATE ATTORNEYS GENERAL ACT OF 2004)

for the following case: **Silva v. TMT Communications Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-1034980-24**
Court Case No.: CIVSB2429747
San Bernardino County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 15, 2024, at Pasadena, California.



Noelia Alonso Esteban