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Assigned for All Purposes:
Judge Lon F. Hurwitz
Dept. CX103

Attorneys for Plaintiff DOROTHY CABUANG,
on behalf of herself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DOROTHY CABUANG, on behalf of herself and
current and former aggrieved employees

Plaintiff,

vs.

ORANGE COUNTY HEAD START, INC.; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: 30-2024-01441197-CU-OE-CXC

PAGA ACTION

**PLAINTIFF DOROTHY CABUANG'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE §§
2698, ET SEQ.**

COMES NOW Plaintiff DOROTHY CABUANG ("Plaintiff"), who alleges and complains
against Defendants ORANGE COUNTY HEAD START, INC.; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-exempt
employees in California during the relevant time period seeking civil penalties associated with
Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours
worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to

1 authorize or permit all legally required and/or compliant rest periods or pay rest period premium
2 wages; indemnification for all necessary expenditures or losses incurred by employees in direct
3 consequence of discharging their duties; statutory penalties for failure to timely pay earned wages
4 during employment; statutory penalties for secretly paying wages lower than designated by statute;
5 statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties
6 in the form of continuation wages for failure to timely pay employees all wages due upon separation
7 of employment. Plaintiff seeks on a representative basis, following notice to the Labor and
8 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code
9 § 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
15 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to Orange County, at 2501 S. Pullman Street, Suite 100, Santa
19 Ana, CA 92705.

20 **III. PARTIES**

21 1. Plaintiff brings this action as a representative of the Labor and Workforce
22 Development Agency on behalf of herself and other current and former employees subject to
23 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
24 filed include current, former and/or future employees of Defendants who work, worked, or will work
25 for Defendants as direct employees as well as temporary employees employed through temp
26 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
27 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
28 Defendants in an hourly position at Defendants' location in Orange County from in or around

February 1, 2008 until on or about February 26, 2024.

2. Plaintiff is informed and believes and thereon alleges that Defendant ORANGE COUNTY HEAD START, INC. is authorized to do business within the State of California and is doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of Defendant ORANGE COUNTY HEAD START, INC. in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant ORANGE COUNTY HEAD START, INC. operates in Orange County and employed Plaintiff and aggrieved employees in Orange County, including but not limited to, at 2501 S. Pullman Street, Suite 100, Santa Ana, CA 92705.

3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1 through 50 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

5. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names, and will amend this complaint when the true names and capacities or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

6. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
3 **2004, LABOR CODE §§ 2698, ET SEQ.**

4 **(Against all Defendants by Plaintiff on behalf of Herself, the State of California, and Other**
5 **Current and Former Aggrieved Employees)**

6 7. Plaintiff incorporates all paragraphs above as though fully set forth herein.

7 8. During Plaintiff's employment and continuing through the present, Plaintiff alleges
8 Defendants violated Labor Code §§ 201, 202, 203, 204, 223, 226, 226.7, 510, 1194, 1197, 2802,
9 and the applicable Wage Orders.

10 9. Specifically, Defendants have committed the following violations of California
11 Labor Code:

12 10. **Failure to pay wages for all hours worked at the legal minimum wage:**
13 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
14 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
15 which includes all time that an employee is under control of the employer and all time the employee
16 is suffered and permitted to work. This includes the time an employee spends, either directly or
17 indirectly, performing services which inure to the benefit of the employer.

18 11. Labor Code §§ 1194 and 1197 require an employer to compensate employees for all
19 "hours worked" at least at a minimum wage rate of pay as established by the IWC and the Wage
20 Orders.

21 12. In this case, Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees worked more minutes per shift than Defendants credited them with having
23 worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved
24 California-based hourly non-exempt employees all wages at the applicable minimum wage for all
25 hours worked due to Defendants' policies, practices, and/or procedures including, but not limited
26 to, requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 employees to perform work while off-the-clock without being paid for that time.

28 13. Therefore, Defendants suffered, permitted, and required Plaintiff and other current

1 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
2 control without paying wages for that time. This resulted in Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees working time for which they were not
4 compensated any wages, in violation of Labor Code §§ 1194 and 1197 and the applicable Wage
5 Order.

6 14. **Failure to pay wages for overtime hours worked at the overtime rate of pay**
7 **and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of
8 their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer
9 is required to pay hourly employees for all “hours worked,” which includes all time that an employee
10 is under control of the employer and all time the employee is suffered and permitted to work. This
11 includes the time an employee spends, either directly or indirectly, performing services that inure to
12 the benefit of the employer.’

13 15. Labor Code §§ 510 and 1194 require an employer to compensate employees a higher
14 rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40) hours
15 in a workweek, and on any seventh consecutive day of work in a workweek:

16 Any work in excess of eight (8) hours in one workday, any work in excess of forty
17 (40) hours in any one (1) workweek, and the first eight (8) hours worked on the
18 seventh day of work in any one (1) workweek, shall be compensated at the rate of no
19 less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any
20 work in excess of twelve (12) hours in one (1) day shall be compensated at the rate
of no less than twice the regular rate of pay for an employee. In addition, any work
in excess of eight (8) hours on any seventh day of a workweek shall be compensated
at the rate of no less than twice the regular rate of pay of an employee.

21 Labor Code § 510.

22 16. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved
23 California-based hourly non-exempt employees overtime wages for all overtime hours worked due
24 to Defendants’ policies, practices, and/or procedures including, but not limited to, requiring Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees to perform
26 work while off-the-clock without being paid for that time.

27 17. The foregoing policies, practices, and/or procedures resulted in time during each
28 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt

1 employees were under the control of Defendants but were not compensated. To the extent that the
2 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
3 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
4 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
5 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code §§
6 510, 1194 and 1198, and the applicable Wage Order.

7 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
8 **Defendants failed to provide legally required and compliant rest periods and/or failure to pay**
9 **rest period premium:** Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

11 19. California law requires every employer to authorize and permit an employee a rest
12 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
13 § 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10 minutes’ rest
14 for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
15 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker*
16 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code § 226.7; Wage
17 Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period. Wage
18 Order 4 at §12. Additionally, the rest period requirement “obligates employers to permit – and
19 authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*,
20 (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all
21 duties and relinquish control over how employees spend their time. *Id.*

22 20. If the employer fails to authorize or permit a required rest period, the employer must
23 pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday the
24 employer did not authorize or permit a legally required rest period. Labor Code § 226.7; Wage Order
25 4 at § 12.

26 21. In this case, Defendants failed to authorize or permit all legally required and
27 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
28 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not

1 limited to, failing to provide Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours worked
3 or major fraction thereof, as a result of constant interrupted and/or shortened.

4 22. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
5 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday
7 they did not receive legally required and compliant rest periods, in violation of Labor Code § 226.7.

8 23. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and
9 other current and former aggrieved California-based hourly non-exempt employees not receiving
10 wages to compensate them for workdays in which Defendants did not provide them with rest periods
11 in compliance with California law.

12 24. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
13 **Employment:** California law requires that every employer must indemnify its employees for all
14 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the
15 obedience of the directions of the employer. Moreover, an employer is prohibited from passing the
16 ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

17 25. Defendants have violated Labor Code § 2802 by failing to indemnify Plaintiff and
18 other current and former aggrieved California-based non-exempt hourly employees' necessary
19 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed
20 policies, practices, and/or procedures included, but not limited to school supplies for work-related
21 purposes - without reimbursing Plaintiff and other current and former aggrieved California-based
22 hourly non-exempt employees for such use.

23 26. Moreover, Defendants employed policies and procedures which ensured Plaintiff and
24 aggrieved employees would not receive indemnification for their employment related expenses.
25 This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in
26 compliance with California law.

27 27. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
28 employment related expenses, including but not limited to costs related to use of their personal cell

1 phones and costs associated with their uniforms pursuant to Labor Code § 2802.

2 28. **Failure to timely pay earned wages during employment:** In California, wages
3 must be paid at least twice during each calendar month on days designated in advance by the
4 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
5 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
6 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
7 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
8 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
9 calendar days following the close of the payroll period in which wages were earned. Labor Code §
10 204(d).

11 29. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
12 timely pay Plaintiff's and other current and former aggrieved California-based hourly non-exempt
13 employees' earned wages (including minimum wages, overtime wages, and/or rest period premium
14 wages), in violation of Labor Code § 204. Defendants' aforementioned policies, practices, and/or
15 procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved
16 California-based hourly non-exempt employees' their earned wages within the applicable time
17 frames outlined in Labor Code § 204.

18 30. **Secret payment of lower wages than designated by statute:** Labor Code § 223
19 provides that, where any statute or contract requires an employer to maintain the designated wage
20 scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated
21 by statute or contract. By engaging in the unlawful conduct alleged herein, including by failing to:
22 pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful sick pay
23 at the employees' regular rate of pay, as established by Labor Code §§ 226.7, 246, 510, 1194 and
24 §§ 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor Code § 1198, the
25 Defendant secretly paid a lower wage than designated by statute while purporting to pay the wages
26 designated by statute, in violation of Labor Code § 223.

27 31. **Failure to provide complete and accurate wage statements:** Labor Code § 226,
28 subdivision (a). Labor Code § 226(a) provides, *inter alia*, that, upon paying an employee his or her

1 wages, the employer must “furnish each of his or her employees ... an itemized statement in writing
2 showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee
3 whose compensation is solely based on a salary and who is exempt from payment of overtime under
4 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission, (3) the
5 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
6 rate basis, (4) all deductions, provided, that all deductions made on written orders of the employee
7 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay
8 period for which the employee is paid, (7) the name of the employee and his or her social security
9 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
10 hourly rates in effect during the pay period and the corresponding number of hours worked at each
11 hourly rate by the employee.”

12 32. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
13 and other current and former aggrieved California-based hourly non-exempt employees all wages
14 earned (including minimum wages, overtime wages, and/or rest period premium wages) rendered
15 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
16 wage statements inaccurate, in violation of Labor Code § 226(a)(1, 2, 5 & 9).

17 33. **Failure to pay employees all wages due at time of termination/resignation:** An
18 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
19 wages are due immediately upon termination (Labor Code § 201) or within seventy-two (72) hours
20 of resignation (Labor Code § 202).

21 34. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
22 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
23 their earned wages (including minimum wages, overtime wages, and/or rest period premium wages),
24 Defendants failed to pay those employees timely after each employee’s termination and/or
25 resignation, in violation of Labor Code §§ 201, 202, and 203.

26 35. Labor Code §§ 2699, subdivisions (a) and (g) authorize an aggrieved employee, on
27 behalf of himself or herself and other current or former employees, to bring a civil action to recover
28 civil penalties against all Defendants pursuant to the procedures specified in Labor Code § 2699.3.

1 36. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
2 § 2699.3. On August 23, 3024, Plaintiff filed a PAGA Claim Notice with the LWDA and provided
3 notice to Defendants by certified mail which provided notice of the specific provisions of the Labor
4 Code alleged to have been violated, including the facts and theories to support the violations alleged.

5 37. Pursuant to Labor Code § 2699.3, the LWDA must give written notice by certified
6 mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60
7 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice
8 within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends to investigate
9 Plaintiff's claims.

10 38. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff is entitled to recover civil
11 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
12 and 1194, During Plaintiff's employment and continuing through the present, preceding Plaintiff
13 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

14 a. For violations of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802; one
15 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
16 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation
17 [penalty amounts established by Labor Code § 2699(f)(2)].

18 b. For violations of Labor Code § 226(a), alternatively, two hundred fifty dollars
19 (\$250) for each employee for each pay period for the initial violation, and for each subsequent
20 violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty
21 amounts established by Labor Code § 226.3].

22 c. For violations of Labor Code § 510, fifty dollars (\$50) for each employee for
23 each pay period for the initial violation, and for each subsequent violation, one hundred dollars
24 (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor
25 Code § 558].

26 d. For violations of Labor Code § 204, one hundred dollars (\$100) for each
27 failure to pay each employee in any initial violation, and for each subsequent violation, or any willful
28 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25

1 percent of the amount unlawfully withheld [penalty amounts established by Labor Code § 210].

2 e. For violations of Labor Code § 223, one hundred dollars (\$100) for each
3 failure to pay each employee in any initial violation, and for each subsequent violation, or any willful
4 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
5 percent of the amount unlawfully withheld [penalty amounts established by Labor Code § 225.5].

6 39. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of reasonable
7 attorneys' fees and costs in connection with her claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
10 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

11 **ON THE FIRST CAUSE OF ACTION:**

12 1. That Defendants be found to have violated the provisions of the Labor Code and the
13 IWC Wages Orders as to the Plaintiff and aggrieved employees;

14 2. For any and all legally applicable penalties during the relevant statute of limitations
15 subject to any permissible tolling, including but not limited to those recoverable under the California
16 Labor Code, including but not limited to §§ 210, 225.5, 226.3, 558, 2699(f);

17 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
18 under California Labor Code § 2699(g); and

19 4. For such and other further relief, in law and/or equity, as the Court deems just or
20 appropriate.

21
22 Dated: November 20, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

23
24
25 By:



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