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Attorneys for Plaintiff NEFTALY GAMBOA,
on behalf of the general public as private attorney general

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

NEFTALY GAMBOA, on behalf of the general
public as private attorney general,

Plaintiff,

v.

TALK 4 LESS WIRELESS
COMMUNICATIONS LLC, a Texas Limited
Liability Company and DOES 1-50, inclusive,

Defendant.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff NEFTALY GAMBOA (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendant TALK 4 LESS WIRELESS COMMUNICATIONS LLC, a Texas Limited Liability Company and DOES 1-50, inclusive (“Defendant”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendant violated various provisions of the California Labor Code. As set forth below, Defendant implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to pay minimum and overtime wages, (b) failure to provide rest periods, (c) failure to pay all wages earned and owed during employment, (d) failure to provide accurate itemized wage statements, (e) failure to reimburse necessary business expenses, and (f) unlawful deduction of wages. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendant because, upon information and belief, Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California

1 Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendant is doing business throughout California, including but not
4 limited to San Diego County, and each Defendant is within the jurisdiction of this Court for service
5 of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other
6 aggrieved employees within the State of California. Defendant employs numerous aggrieved
7 employees in in the State of California.

8 6. On information and belief, Defendant has conducted business within the State of
9 California during the purported liability period and continue to conduct business throughout the
10 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
11 similarly situated aggrieved employees within California.

12 7. The California Superior Court also has jurisdiction in this matter because on
13 information and belief there are no federal questions at issue, as the issues herein are based solely
14 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
15 California Code of Civil Procedure, the California Civil Code, and the California Business and
16 Professions Code.

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendant consistently maintained and enforced against
19 Defendant's aggrieved Employees, among others, the following unlawful practices and policies,
20 in violation of California state wage and hour laws: (a) failure to pay minimum and overtime
21 wages, (b) failure to provide rest periods, (c) failure to pay all wages earned and owed during
22 employment, (d) failure to provide accurate itemized wage statements, (e) failure to reimburse
23 necessary business expenses, and (f) unlawful deduction of wages.

24 9. On information and belief, during the statutory liability period and continuing to
25 the present, Defendant has had a consistent policy of failing to pay wages including overtime
26 wages for hours worked while subject to the control of Defendant.

27 10. On information and belief, during the statutory liability period and continuing to
28

1 the present, Defendant has failed to provide rest periods to Plaintiff and aggrieved employees.
2 Defendant has also failed to provide rest premiums for missed rest periods.

3 11. On information and belief, during the statutory liability period and continuing to
4 the present, Defendant has had a consistent policy of failing to timely pay wages during
5 employment.

6 12. On information and belief, during the statutory liability period and continuing to
7 the present, Defendant has failed to provide Plaintiff and aggrieved employees accurate itemized
8 wage statements.

9 13. On information and belief, during the statutory liability period and continuing to
10 the present, Defendant failed to reimburse necessary business expenses incurred by Plaintiff and
11 aggrieved employees.

12 14. On information and belief, during the statutory liability period and continuing to
13 the present, Defendant has unlawfully deducted wages from Plaintiff and aggrieved employees.

14 15. Plaintiff on behalf of the general public as private attorney general and all other
15 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
16 enumerated under 2699.5 as follows: sections 201-204, 221, 223, 226, 510, 512, 558, 226.3, 1174,
17 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and seeking penalties, interest, attorneys' fees and
18 costs.
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21 **III. PARTIES**

22 **A. Plaintiff**

23 16. Plaintiff, NEFTALY GAMBOA, was at all times relevant to this action, a resident
24 of California. Plaintiff was employed by Defendant in approximately June of 2024 until July of
25 2024 as a Non-Exempt Employee with the title of Sales Representative.

26 17. As Defendant's employees, Plaintiff, and all other aggrieved employees were
27 regularly required to and subsequently suffered:

28 a) to perform work subject to the control of the employer without being compensated all

1 wages including overtime, all in violation of California labor laws, regulations, and the
2 Industrial Welfare Commission Wage Order (“IWC”);

3 b) not provided first and second rest periods nor paid premium wages;

4 c) not paid timely during their employment;

5 d) not provided accurate itemized wage statements;

6 e) not reimbursed necessary business expenses; and

7 f) unlawful deduction of their wages.

8 18. On information and belief, Defendant willfully failed to pay all earned wages in
9 the form regular wages and overtime wages, to its Non-Exempt Employees and members of the
10 Representative Group; nor have Defendant returned to Plaintiff or members of the
11 Representative Group, upon or after separation from employment with Defendant, all wages
12 earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
13 general public as private attorney general and all other aggrieved employees.

14 **B. Defendant**

15 19. Defendant, TALK 4 LESS WIRELESS COMMUNICATIONS LLC, is a Texas
16 Limited Liability Company that operates as a wireless cellular service. On information and belief,
17 Defendant operates nationwide. Plaintiff estimates there are in excess of one hundred (100) Non-
18 Exempt Employees who work or have worked for Defendant over the last year.

19 20. Other than identified herein, Plaintiff is unaware of the true names, capacities,
20 relationships and extent of participation in the conduct alleged herein, of the Defendant sued as
21 DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant are
22 legally responsible for the wrongful conduct alleged herein and therefore sues these Defendant by
23 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
24 are ascertained.

25 21. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
26 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
27 Representative Group, and exercised control over their wages, hours, and working conditions.
28

1 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
2 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
3 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
4 to the other Defendant.

5 **IV. GENERAL ALLEGATIONS**

6 22. At all times set forth herein, Defendant employed Plaintiff and other persons in the
7 capacity of non-exempt positions, however titled, throughout the state of California.

8 23. Plaintiff is informed and believe Aggrieved employees have at all times pertinent
9 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
10 rules and regulations of the IWC California Wage Orders.

11 24. Defendant continues to employ Non-Exempt Employees, however titled, in
12 California and implement a uniform set of policies and practices to all non-exempt employees, as
13 they were all engaged in the generic job duties related to Defendant's business.

14 25. Plaintiff is informed and believe, and thereon alleges, that Defendant is and were
15 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
16 the requirements of California's wage and employment laws.

17 26. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
18 employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
19 week.
20

21 27. During the relevant time frame, Defendant compensated Plaintiff and Aggrieved
22 employees based upon an hourly rate.

23 28. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
24 employees typically worked five (5) days a week.

25 29. Plaintiff is informed and believe that the Aggrieved employees were required to
26 keep similar schedules.

27 30. In addition, the Aggrieved employees frequently worked in excess of eight (8)
28 hours a day and/or over forty (40) hours in a workweek but were not properly paid minimum and

1 overtime wages.

2 31. Defendant also failed to properly calculate Plaintiff's and Aggrieved employees'
3 regular rate of pay including but not limited to by failing to include all forms of
4 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
5 commissions, shift differentials, and other compensation for overtime calculation purposes.

6 32. On information and belief, Plaintiff had \$600 deducted from her wages for a
7 "scanning error" where a customer was undercharged for a cell phone. This amounts to an unlawful
8 deduction of her wages.

9 33. Plaintiff is informed and believe, and thereon alleges, that Defendant know, should
10 know, knew, and/or should have known that Plaintiff and Aggrieved employees were entitled to
11 receive premium wages based on their regular rate of pay under California Labor Code § 226.7
12 but were not receiving such compensation.

13 34. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
14 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
15 period for every four hours worked or major fraction thereof, which is a violation of the California
16 Labor Code and IWC wage order.

17 35. Defendant maintained and enforced scheduling practices, policies, and imposed
18 work demands that frequently required Plaintiff and Aggrieved employees to forego their lawful,
19 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
20 requisite rest periods were not timely authorized and permitted as a result of Defendant's failure
21 to provide relief for Plaintiff and Aggrieved employees to take their lawfully required breaks.

22 36. Despite the above-mentioned rest period violations, Defendant did not compensate
23 Plaintiff, and on information and belief, did not pay Aggrieved employees one additional hour of
24 pay at their regular rate as required by California law, including California Labor Code § 226.7
25 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized
26 and permitted.

27 37. Although it was Defendant's practice to pay employees commissions, Plaintiff was
28

1 not paid any.

2 38. Defendant failed to reimburse Plaintiff and Aggrieved employees for business
3 expenses incurred pursuant to California Labor Code § 2802. Plaintiff and Aggrieved employees
4 were not reimbursed for personal cell phone use, which was required for her to perform her work
5 related duties.

6 39. Plaintiff and Aggrieved employees were required to download an app on her
7 personal cellphone called “Paycom.com” in order to clock in and out, obtain paystubs, and
8 communicate with her employer.

9 40. Upon information and belief, Defendant knew and or should have known that it is
10 improper to implement policies and commit unlawful acts such as:

11 (a) requiring employees to work four (4) hours or a major fraction thereof without
12 being provided a minimum ten (10) minute rest period and without compensating the employees
13 with one (1) hour of pay at the employees’ regular rate of compensation for each workday that a
14 rest period was not provided;

15 (b) failing to pay overtime and minimum wages;

16 (c) failing to maintain accurately itemized wage statements;

17 (d) failing to reimburse necessary business expenses;

18 (e) unlawful deduction of wages and

19 (f) conducting and engaging in unfair business practices.
20

21 41. In addition to the violations above, and on information and belief, Defendant knew
22 they had a duty to compensate Plaintiff and Aggrieved employees for the allegations asserted
23 herein, and that Defendant had the financial ability to pay such compensation, but willfully,
24 knowingly, recklessly, and/or intentionally failed to do so.

25 42. Plaintiff and Aggrieved employees they seek to represent are covered by, and
26 Defendant is required to comply with, applicable California Labor Codes, Industrial Welfare
27 Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding
28 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*

1 **V. REPRESENTATIVE CLAIMS**

2 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

3 43. Plaintiff incorporate by reference and re-alleges each and every allegation
4 contained above, as though fully set forth herein.

5 44. PAGA is a mechanism by which the State of California can enforce state labor laws
6 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
7 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
8 law enforcement action designed to protect the public and not to benefit private parties. The
9 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
10 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
11 Legislature specified that "it was...in the public interest to allow aggrieved employees, acting as
12 private attorneys general to recover civil penalties for Labor Code violations..." Stats. 2003, Ch.
13 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

14 45. Plaintiff brings this Representative Action on behalf of the State of California with
15 respect to himself and all other individuals who are or previously were employed by Defendant as
16 non-exempt California employees during the applicable statutory period (the "aggrieved
17 employees").

18 46. On December 11, 2024, Plaintiff complied with notice requirements pursuant to
19 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
20 **A**, indicating that the LWDA and Defendant were put on notice of the claims alleged here and that
21 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
22 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
23 representative capacity. The substance and violations set forth in this Complaint of which the
24 LWDA was provided timely notice, Plaintiff have also sent a copy of this PAGA Representative
25 Action Complaint to the LWDA.

26 47. Plaintiff are aggrieved employees as defined in Labor Code Section 2699(a).
27 Plaintiff bring this cause of action on behalf of all current and former California non-exempt
28

1 Employees of Defendant.

2 48. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
3 which Defendant are liable due to numerous Labor Code violations as set forth in this Complaint,
4 including without limitation Labor Code section 201-204, 221, 223, 226, 226.3, 510, 512, 558,
5 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and, 2698 *et seq.*, applicable IWC Wage
6 Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

7 49. Defendant violated Labor Code section 510, and 1194 by failing to accurately pay
8 overtime wages owed. Therefore, Defendant violated section 510, and 1194 by not compensating
9 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
10 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation
11 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
12 (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the
13 regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight
14 (8) hours in a day on the seventh day of work in a particular work week.

15 50. Pursuant to the IWC wage orders applicable to Plaintiff and the Aggrieved
16 Employees, "Every employer shall authorize and permit all employees to take rest periods, which
17 insofar as practicable shall be in the middle of each work period.... [The] authorized rest period
18 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per
19 four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as
20 hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a) prohibits
21 an employer from requiring any employee to work during any rest period mandated by an
22 applicable order of the IWC. Defendant were required to authorize and permit employees such as
23 Plaintiff and the Aggrieved Employees to take rest periods, based upon the total hours worked at
24 a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no
25 deduction from wages.
26

27 51. Despite said requirements applicable to Plaintiff and the Aggrieved Employees,
28 Defendant failed and refused to authorize and permit Plaintiff and the Aggrieved Employees to

1 take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.
2 Plaintiff regularly worked shifts without properly authorized rest periods. Defendant did not pay
3 Plaintiff an hour of wages for each day that a rest period violation occurred. On information and
4 belief, the Aggrieved Employees endured similar violations as a result of Defendant's rest period
5 policies and practices.

6 52. By their failure to provide rest periods for every four (4) hours or major fraction
7 thereof worked by Plaintiff and the Aggrieved Employees, Defendant violated the provisions of
8 Labor Code sections 226.7 and the applicable IWC Wage Order(s).

9 53. Plaintiff and the Aggrieved Employees were also injured because the wage
10 statements Defendant provided to them failed to accurately state the hours worked and also to state
11 that the Aggrieved Employees were being paid one hour of pay at their regular rate for days in
12 which they were not provided with each of their authorized rest periods. Defendant has made it
13 impossible to properly calculate important information from the wage statements that were
14 provided to Plaintiff and the Aggrieved Employees throughout the liability period.

15 54. Plaintiff and all other aggrieved employees who were separated from employment
16 are entitled to compensation for all forms of wages earned, including but not limited to
17 compensation minimum and overtime wages, but to date have not received such compensation,
18 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-204.

19 55. On information and belief, Defendant willfully failed to pay all wages due and
20 owing upon separation from employment. These wages include minimum and overtime wages.

21 56. On information and belief, Defendant willfully failed to pay all wages due and
22 owing during employment. These wages include minimum and overtime wages.

23 57. On information and belief, Defendant failed to provide accurate itemized wage
24 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
25 and the aggrieved employees pursuant to Labor Code section 226(a). Defendant further failed to
26 include or itemize the gift card payments made to Plaintiff and Aggrieved Employees.

27 58. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
28

1 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
2 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
3 for each violation in a subsequent citation, for which the employer fails to provide the employee a
4 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

5 59. Additionally, Defendant have no accurate records relating to aggrieved employees'
6 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
7 rates, in violation of applicable Wage Orders. Similarly, Defendant failed to maintain accurate
8 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

9 60. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Aggrieved
10 Employees for necessary expenditures incurred in direct consequences of the discharge of his or
11 her duties. As a necessary part of employment, Plaintiff and on information and belief Aggrieved
12 Employees, were not adequately reimbursed by Defendant for expenses related to all expenses as
13 described above. Despite these realities of the job, Defendant failed to provide reimbursements.

14 61. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
15 implied, made by any employee to waive the benefits of this article or any part thereof is null and
16 void, and this article shall not deprive any employee or his or her personal representative of any
17 right or remedy to which he is entitled under the laws of this State.

18 62. As a result of Defendant's unlawful conduct, Plaintiff and aggrieved employees
19 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
20 worked.

21 63. Labor Code section 221 states, "It shall be unlawful for any employer to collect or
22 receive from an employee any part of wages theretofore paid by said employer to said employee.".

23 64. During the relevant time period, Defendants have unlawfully taken deduction from
24 Plaintiffs and Aggrieved Employees compensation for Defendants'. Because of these unlawful
25 deductions from Plaintiffs ' and Aggrieved Employees' compensation, they are liable to Plaintiffs
26 and Aggrieved Employees for the compensation that should have been paid but for the unlawful
27 deductions pursuant to Labor Code §§ 221 and 223 and applicable IWC Wage Orders. As a result,
28

Defendants are liable to Plaintiffs and Aggrieved Employees for penalties, reasonable attorneys' fees, and costs pursuant to Labor Code 1194.

65. Plaintiff and the Representative aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: December 11, 2024

JAMES HAWKINS APLC

By: _____

JAMES R. HAWKINS
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LAUREN FALK
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Attorneys for Plaintiff NEFTALY
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