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ORIGINAL FILED
Superior Court of California
County of Los Angeles

SEP 18 2015

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

6 Attorney for Plaintiff
7 TINA PATEL, and on behalf of other similarly situated

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 TINA PATEL, in her representative capacity

11
12 Plaintiff,

13 vs.

14
15 ONEWEST RESOURCES, LLC and Does 1-50,
16 inclusive,

17 Defendants.

Case No.

BC 595033

REPRESENTATIVE ACTION

COMPLAINT FOR VIOLATION OF
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (Labor Code
Section 2698 *et seq.*)

DEMAND FOR JURY TRIAL

BY FAX

18 Plaintiff Tina Patel in her representative capacity, alleges as follows:

19 INTRODUCTION

20 1. Plaintiff brings this action against defendant OneWest Resources, LLC to recover
21 penalties. Defendant's policy and practice of requiring employees to clock in and out on an
22 internet-based time keeping system that employees could only access with a computer running
23 and connected to a website, resulted in Defendant's failure to pay all regular and overtime wages
24 due, failure to maintain records showing hours worked, untimely meal periods, inaccurate wage
25 statements, and wages due at termination. Plaintiff brings this action pursuant to the Private
26 Attorneys General Act of 2004 ("PAGA"), Labor Code Section 2698 *et seq.* on a representative
27 basis. All current and former non-exempt employees of Defendant are aggrieved employees.
28

1 **PARTIES**

2 2. Plaintiff Tina Patel worked for Defendant or its predecessors for over ten years.
3 She was employed as a Systems Analyst by Defendant from March 2009 to May 2015. Plaintiff
4 resides in Los Angeles County.

5 3. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
6 herein, defendant OneWest Resources, LLC, with its principal place of business located at 888 E.
7 Walnut Street, Pasadena, California 91101, is and was a limited liability company organized in
8 California. Plaintiff is informed and believes and thereupon alleges that OneWest Resources,
9 LLC does business as OneWest Bank N.A.

10 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
11 Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
12 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
13 Plaintiff is informed and believes and thereon alleges that each of these fictitiously named
14 defendants is responsible in some manner for the acts or omissions herein alleged.

15 5. At all times mentioned herein, Defendant and Does 1 through 50, inclusive, were
16 the employees, agents, or representatives of each other defendant and were acting with the
17 knowledge and consent of each other defendant and within the purpose and scope of such
18 employment, agency, or representation in doing or failing to do the things alleged in this
19 complaint.

20 **JURISDICTION & VENUE**

21 6. This Court has jurisdiction over Plaintiff's claims for civil penalties under
22 PAGA. Plaintiff's potential recovery of penalties for herself is less than \$75,000.

23 7. Venue is proper because Defendant resided in Los Angeles County at the
24 commencement of this action. Defendant employed Plaintiff and other aggrieved employees in
25 Los Angeles County (in addition to other counties).

26 **GENERAL ALLEGATIONS**

27 8. On June 1, 2010, Defendant reclassified Plaintiff's position from exempt to non-
28 exempt, changing her title from Systems Analyst II to System/IT Analyst I. Plaintiff remained

1 classified as non-exempt for the rest of her employment. She was normally scheduled to work
2 from 7:00 AM to 4:00 PM.

3 9. In connection with this reclassification, Defendant instructed Plaintiff to record her
4 work time in an internet-based time management system called Enterprise eTime. Defendant's
5 employee handbook also instructs that all non-exempt employees "must use the Company's
6 approved timekeeping system(s)...." This remained Defendant's policy and practice throughout
7 the rest of Plaintiff's employment. Plaintiff is informed and believes and thereupon alleges that
8 Defendant's policy and practice continues to be that non-exempt employees must record their
9 time through Enterprise eTime.

10 10. The California Labor Code and the California Industrial Wage Orders require that
11 employers pay employees a minimum wage for all hours worked. In order to record her work
12 time in Enterprise eTime, Plaintiff had to first log into her computer, then go to the Enterprise
13 eTime website, log into the Enterprise eTime website with a username and password and navigate
14 to the page where she would click a button that would time stamp her beginning of work time.
15 Plaintiff had to repeat this procedure upon returning from her meal period. OneWest's computers
16 were also periodically completely shut down for computer updates and other reasons so that on
17 those occasions Plaintiff had additional uncompensated worktime as she had to start up her
18 computer before she could commence the process of clocking in. In fact, even though
19 Defendant's time-keeping policy and practice prevents an employee from recording the time it
20 took to complete this clocking-in procedure, Defendant's employee handbook admits that it is
21 work time: "Work time includes, for example, time spent waiting to bring up a computer to log
22 in." Plaintiff is informed and believes and thereupon alleges that aggrieved employees had to
23 undergo the same procedures to clock in each day. While it took less than ten minutes to go
24 through the clocking-in procedure, this uncompensated work time was a requirement of the job
25 that occurred every workday for every aggrieved employee.

26 11. Plaintiff also had to click the time stamp to clock out at the end of each day before
27 she could then log out of her computer. There was therefore also uncompensated work time after
28 clocking out each day. Plaintiff is informed and believes and thereupon alleges that aggrieved

1 employees had to undergo the same procedures to clock out each day.

2 12. The California Labor Code and the California Industrial Wage Orders require that
3 employers pay employees overtime for all hours worked in excess of eight in a day or forty in a
4 week. Plaintiff regularly worked eight hours per day and/or 40 hours per week on the clock.
5 Because Defendant's time-keeping practice required her to start working before she was able to
6 clock in and to continue working after she clocked out, she regularly worked uncompensated
7 overtime hours. Plaintiff is informed and believes and thereupon alleges that aggrieved
8 employees work the same or similar hours and therefore also regularly worked uncompensated
9 overtime hours.

10 13. The California Labor Code and the California Industrial Wage Orders require that
11 "an employer may not employ an employee for a work period of more than five hours per day
12 without providing the employee with a meal period...." Plaintiff commenced her meal period
13 before the conclusion of her fifth hour of time on the clock when work duties allowed her to do
14 so. Because Defendant's time-keeping practice required her to start working before she was able
15 to clock in, some of her meal periods taken before the conclusion of her fifth hour of time on the
16 clock were not actually commenced until after the conclusion of her fifth hour of work time.

17 14. Under California law, an employer must pay an employee all wages due upon
18 termination or resignation. The willful failure to do so can result in waiting time penalties equal
19 to 30 days of an employee's wage. *See* Labor Code section 203. Defendant did not pay Plaintiff
20 or aggrieved employees all wages due upon end of employment because their time-keeping
21 practices and policies prevented them from recording all worked time. Defendant's conduct in
22 refusing to pay these wages was willful.

23 15. Plaintiff is informed and believes and thereupon alleges that Defendant knowingly
24 and intentionally failed to furnish Plaintiff and aggrieved employees with accurate wage
25 statements, which among other things, fail to show total hours worked. Plaintiff is informed and
26 believes and thereupon alleges that this failure was not due to a clerical error or inadvertent
27 mistake.

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1 f. failure to provide itemized wage statements to non-exempt employees in
2 violation of Labor Code §§ 226(a); and

3 g. failure to keep required payroll records in violation of the applicable wage
4 orders and Labor Code §§ 1174 and 1174.5.

5 20. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a
6 civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250)
7 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
8 employee for each subsequent violation of Labor Code § 226(a).

9 21. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558 imposes
10 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
11 violations for each underpaid employee for each pay period for which the employee was
12 underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred
13 dollars (\$100) for subsequent violations for each underpaid employee for each pay period for
14 which the employee was underpaid in addition to an amount sufficient to recover underpaid
15 wages. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
16 aggrieved employees pursuant to Labor Code § 558(a)(3). The statute of limitations for civil
17 penalties under Labor Code § 558(a)(3) is three years, not one.

18 22. With respect to violations of Labor Code § 1174, Labor Code § 1174.5 imposes a
19 civil penalty of \$500.

20 23. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100)
21 per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay
22 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
23 a civil penalty is not specifically provided, including Labor Code §§ 226.7, 1174, 1182.12, 1194,
24 1197, and 1198.

25 24. Plaintiff has satisfied the requirements of Labor Code section 2699.3.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays individually and on behalf of aggrieved employees for judgment against Defendant as follows:

1. An award of civil penalties pursuant to PAGA;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g) and/or other applicable law;
3. Pre-judgment and post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

Dated: September 17, 2015

BAKER & SCHWARTZ, P.C.

By: 

Chris Baker
Michael Curtis
Attorneys for Plaintiff Tina Patel, individually and on behalf of aggrieved employees

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: September 17, 2015

BAKER & SCHWARTZ, P.C.

By: 

Chris Baker
Michael Curtis
Attorneys for Plaintiff Tina Patel, individually and on behalf of aggrieved employees