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12 and the Aggrieved Employees

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

12 NIGEL CROCKET, individually, and)
13 on behalf of all others similarly)
14 situated,)
15 Plaintiff,)
16 vs.)
17 DELL MARKETING L.P., and DOES)
18 1 through 100, inclusive,)
19 Defendants.)

Case No. 16CV301113

FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR CIVIL
PENALTIES

[Jury Trial Demanded]

20 Representative Plaintiff alleges as follows:

21 PRELIMINARY STATEMENT

22 1. This is a representative action seeking unpaid civil penalties under the California
23 Labor Code Private Attorneys General Act of 2004 ("PAGA"), codified as California Labor Code §
24 2698, *et seq.* Plaintiff Nigel Crocket ("Plaintiff") brings this action on behalf of himself as an
25 aggrieved employee and on behalf of all other persons similarly situated ("Aggrieved Employees")
26 who are or were employed as non-exempt Information Technology consultants by defendants Dell
27 Marketing L.P., and Does 1 through 100, inclusive (collectively "Defendant" and/or "Dell") in any
28

ENDORSED
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CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
V. Taylor

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FAXED

1 Dell Information Technology support staff role in California within the "Relevant Time Period"
2 defined below.

3 2. The "Relevant Time Period" is designated as the time from June 14, 2015 through the
4 date of trial, based upon the allegation that the violations of California's wage and hour laws, as
5 described more fully below, have been ongoing throughout that time.

6 3. During the Relevant Time Period, Defendant has had a consistent policy of, *inter alia*,
7 (1) willfully failing to provide meal periods and/or rest periods to Plaintiff and/or Aggrieved
8 Employees, (2) requiring its non-exempt Information Technology consultants, including Plaintiff
9 and Aggrieved Employees, to conduct duties for and/or under the direction of Dell without paying
10 these employees wages (including overtime wages) for all compensable time, (3) failing to
11 adequately reimburse Plaintiff and/or Aggrieved Employees for business expenses related to the
12 operations of Defendant, (4) willfully failing to pay compensation owing in a prompt and timely
13 manner to Plaintiff and/or Aggrieved Employees whose employment with Dell was terminated, and
14 (5) willfully failing to provide Plaintiff and Aggrieved Employees with accurate semimonthly
15 itemized statements of the total numbers of hours each of them worked, the applicable deductions,
16 and the applicable hourly rates in effect during the applicable pay period.

17 **INTRODUCTION**

18 4. Plaintiff is informed and believes and, based thereon, alleges that within the Relevant
19 Time Period (defined below), Defendant contracts with and provides IT support to at least
20 approximately 100 companies across the State of California. In doing so, Defendant has employed
21 hundreds of individuals as non-exempt Information Technology consultants, positions which are
22 entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other
23 benefits of employment as set forth herein.

24 5. Despite actual knowledge of these facts and legal mandates, Dell has and continues to
25 enjoy an advantage over its competition and a resultant disadvantage to its workers by electing not to
26 sufficiently offer meal and rest periods to its California non-exempt Information Technology
27 consultants, by not providing duty-free and uninterrupted meal and rest periods to its California non-
28 exempt Information Technology consultants, by failing to adequately reimburse its employees for all

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1 business expenses related to Dell's operations, by not providing all regular and/or overtime pay
2 when due and/or when certain Aggrieved Employees' employment with Dell terminated, and by
3 willfully failing to provide Plaintiff and Aggrieved Employees with accurate semimonthly itemized
4 wage statements.

5 6. Plaintiff is informed and believes and, based thereon, alleges that officers of Dell
6 knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the
7 violation of the laws cited herein.

8 7. Despite Dell's knowledge of Plaintiff's and Aggrieved Employees' entitlement to
9 these benefits of employment, Dell failed to provide same, for all applicable work periods, in
10 violation of California state statutes and California Industrial Welfare Commission Wage Order No.
11 4 and Title 8 of the California Code of Regulations. This action is brought to redress and end this
12 long-time pattern of unlawful conduct once and for all.

13 JURISDICTION AND VENUE

14 8. This Court has jurisdiction over the Representative Plaintiff's and Aggrieved
15 Employees' claims for civil penalties sought herein under the California Labor Code.

16 9. Venue as to Defendant(s) is proper in this Court pursuant to California Code of Civil
17 Procedure § 395(a). Defendant Dell maintains facilities and offices in the County of Alameda, and
18 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
19 service of process. The unlawful acts alleged herein have a direct effect on the Representative
20 Plaintiff and those similarly situated within the State of California and within the County of
21 Alameda. Defendant Dell operates said facilities and has employed numerous Aggrieved Employees
22 in the County of Alameda as well as in other counties within the State of California.

23 PLAINTIFF

24 10. Representative Plaintiff Nigel Crocket is a natural person and was, during the relevant
25 time period identified herein, employed by Defendant Dell as a non-exempt Information Technology
26 consultant with one or more of Defendant's California clients.

27 11. At all time herein relevant, Representative Plaintiff Nigel Crocket was and is now an
28 individual within the category of Aggrieved Employees further described and defined herein.

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1 12. As used throughout this Complaint, the term "Aggrieved Employees" refers to the
2 Representative Plaintiff Nigel Crocket as well as each and every person employed as a non-exempt
3 Information Technology consultant by Defendant in California during the Relevant Time Period.

4 13. Plaintiff brings this action on behalf of himself and as a representative action,
5 pursuant to California Labor Code § 2699, on behalf of the Aggrieved Employees, all persons
6 similarly situated and proximately damaged by unlawful conduct described herein.

7 **DEFENDANTS**

8 14. At all times herein relevant, Defendant Dell Marketing L.P. was/is a corporation
9 and/or other form of business entity, duly licensed, located and doing business in, but not limited to,
10 the County of Alameda in the State of California.

11 15. Plaintiff is informed and believes and, based thereon, alleges that Defendant Dell
12 directly or indirectly employs and has employed and/or exercised control over the wages, hours, and
13 working conditions of Plaintiff and Aggrieved Employees within various California counties,
14 including, but not limited to, the County of Alameda.

15 16. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
16 relevant time herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,
17 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
18 Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein-
19 mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed and/or
20 exercised control over the wages, hours, and/or working conditions of Plaintiff and Aggrieved
21 Employees at various California locations, as identified in the preceding paragraph.

22 17. Plaintiff is unaware of the true names and capacities of the defendants sued herein as
23 Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
24 Plaintiff will seek leave to amend this Complaint when such names are ascertained. Plaintiff is
25 informed and believes and, on that basis, alleges that each of the fictitiously-named defendants
26 is/was responsible in some manner for, gave consent to, ratified and/or authorized the conduct
27 herein-alleged and that Plaintiff's and Aggrieved Employees' damages, as herein-alleged, were
28 proximately caused thereby.

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1 18. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant time
2 herein-mentioned, each of the Defendants was the agent and/or employee of each of the remaining
3 Defendants and, in doing the acts herein alleged, was acting within the course and scope of such
4 agency and/or employment.

5 **REPRESENTATIVE ACTION ALLEGATIONS**

6 19. Plaintiff brings this action on behalf of himself and as a representative action on
7 behalf of the following category of Aggrieved Employees:

8 *All persons who are and/or were employed as non-exempt Information*
9 *Technology consultants by Dell with one or more California Dell clients between*
10 *June 14, 2015 and the present.*

11 20. Defendant and its officers and directors are excluded from the category of Aggrieved
12 Employees defined in the preceding paragraph.

13 **COMMON FACTUAL ALLEGATIONS**

14 21. Defendant Dell has, for years, knowingly failed to properly compensate Plaintiff and
15 the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to,
16 overtime wages and/or compensation for missed meal and/or rest period). Moreover Defendant has
17 failed to provide Plaintiff and the Aggrieved Employees with net ten minute rest period for work
18 shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted, duty-
19 free meal periods of at least 30 minutes for work shifts exceeding five hours. Defendant has declined
20 to pay these wages, even upon an Aggrieved Employee's termination or resignation from
21 employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30
22 days have passed since certain Aggrieved Employees have left Defendant's employ.

23 22. Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate
24 semimonthly itemized statements of the total number of hours worked by each, and all applicable
25 hourly rates in effect during each pay period, in violation of California Labor Code § 226. In doing
26 so, Defendant has not only failed to pay its workers the full amount of compensation due, it has until
27 now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing
28 the magnitude (e.g., the full numbers of hours worked) and financial impact of its wrongdoing.

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1 23. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
2 Plaintiff and Aggrieved Employees are entitled to recover civil penalties (pursuant to California
3 Labor Code § 2699(a)) in an amount to be established at trial. Twenty-five percent of such penalties
4 recovered shall be paid to Plaintiff and the Aggrieved Employees and the remaining seventy-five
5 percent shall be paid to the California Labor and Workforce Development Agency ("LWDA"),
6 pursuant to California Labor Code § 2699(i). As further direct and proximate result of Defendant's
7 unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are also entitled to recover
8 attorneys' fees and litigation costs pursuant to California Labor Code § 2699(g) and/or California
9 Code of Civil Procedure § 1021.5.

10 24. Plaintiff complied with the procedures for bringing suit specified in California Labor
11 Code § 2699.3. By letter dated May 9, 2016, Plaintiff gave notice, by certified mail, to the Labor and
12 Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the
13 California Labor Code alleged to have been violated, including the facts and theories to support
14 these allegations. After receiving no response from the LWDA within 65 days, Plaintiff commenced
15 the instant action.

16 **FIRST CAUSE OF ACTION**
17 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
(California Labor Code §§ 2699)

18 25. Representative Plaintiff incorporates in this cause of action each and every allegation
19 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

20 26. The Private Attorneys General Act of 2004, California Labor Code § 2699(a), states:

21 Notwithstanding any other provision of law, any provision of this code that
22 provides for a civil penalty to be assessed and collected by the Labor and
23 Workforce Development Agency or any of its departments, divisions,
24 commissions, boards, agencies, or employees, for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees....

25 27. Representative Plaintiff (and each and every other Aggrieved Employee defined
26 herein) is an "aggrieved employee" as defined by California Labor Code § 2699(c) because he was
27 employed by Defendant and was one of many employees against whom violations of the law were
28 committed.

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1 28. Representative Plaintiff has met all of the requirements set forth in California Labor
2 Code § 2699.3 necessary to commence a civil action against Defendant for violations of (and/or
3 recovery under) California Labor Code §§ 200-204, inclusive, 226(a), 226.7, 510, 512, 1174(c) and
4 (d), 1194, 1198, and/or 2802.

5 29. Representative Plaintiff brings this action on behalf of himself and all Aggrieved
6 Employees alleging violations of the California Labor Code sections cited in the preceding
7 paragraph.

8 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
9 Representative Plaintiff and Aggrieved Employees have sustained damages, including loss of
10 earnings, in an amount to be established at trial.

11 31. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
12 herein, Representative Plaintiff and Aggrieved Employees are entitled to recover various penalties as
13 provided by California Labor Code § 2699 in an amount to be established at trial, as well as costs
14 and attorneys' fees, pursuant to statute.

15
16 **RELIEF SOUGHT**

17 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the Aggrieved
18 Employees, prays for judgment and the following specific relief against Defendants, and each of
19 them, jointly and separately, as follows:

20 1. That the Court declare, adjudge, and decree that this action is a proper representative
21 action pursuant to California Labor Code § 2699;

22 2. That the Court make an award to the Representative Plaintiff and Aggrieved
23 Employees of civil penalties under California Labor Code § 2699 for each applicable violation;

24 3. For all other Orders, findings and determinations identified and sought in this
25 Complaint;

26 4. For reasonable attorneys' fees, pursuant to California Labor Code § 1194 and/or
27 California Civil Code § 1021.5; and

28 5. For costs of suit and any and all such other relief as the Court deems just and proper.

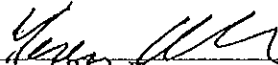
JURY DEMAND

Representative Plaintiff, on behalf of himself and the Aggrieved Employees, hereby demands
a trial by jury.

Dated: June 2, 2017

SCOTT COLE & ASSOCIATES, APC

By:



Teresa Allen, Esq.
Attorneys for Representative Plaintiff
And the Aggrieved Employees

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