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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Michael Clemens, Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION

11 MINDES DORLEAN, in his
12 representative capacity,

13 Plaintiff,

14 v.

15 CARLSBAD UNITED FC, a corporation;
16 and DOES 1-50, inclusive,

17 Defendants.
18
19

) CASE NO. ~~37-2019-00066484-CU-OE-NC~~
)
) **COMPLAINT FOR PENALTIES UNDER**
) **THE PRIVATE ATTORNEYS**
) **GENERAL ACT OF 2004, CALIFORNIA**
) **LABOR CODE § 2698, ET SEQ.**

20
21 Plaintiff Mindes Dorlean (“Plaintiff”) hereby brings this representative action for civil
22 penalties pursuant to the Private Attorneys General Act of 2004 against defendant Carlsbad United
23 FC d/b/a LA Galaxy San Diego (hereinafter “LAGSD”). Plaintiff brings this action on behalf of
24 all current and former individuals employed by LAGSD as coaches in California during the
25 relevant statute of limitations period (the “aggrieved employees”).

26 **INTRODUCTION**

27 1. LAGSD operates a competitive youth soccer organization that includes competitive
28 youth soccer clubs in the State of California. LAGSD hires coaches for these teams and willfully
misclassified these coaches as independent contractors. As a result, LAGSD has violated a number

1 of sections of the California Labor Code.

2 2. Pursuant to the Private Attorneys General Act of 2004, codified in Labor Code §
3 2698 et seq. (“PAGA”), Plaintiff brings this action to recovery civil penalties on behalf of all
4 current and former individuals employed by LAGSD as coaches for the soccer clubs operated by it
5 in California during the relevant statute of limitations period.

6 3. Plaintiff is informed and believes that LAGSD reclassified all of its coaches to
7 employees sometime after receiving Plaintiff’s notice of his intent to bring this PAGA action.

8 **JURISDICTION**

9 4. This Court has jurisdiction over this action pursuant to California Code of Civil
10 Procedure § 410.10 and Labor Code § 2698 et seq. Pursuant to Labor Code § 2698 et seq.,
11 Plaintiff brings this action in his representative capacity on behalf of the aggrieved employees.
12 This representative action asserts claims by Plaintiff only his representative capacity for civil
13 penalties pursuant to PAGA and does not assert individual claims.

14 5. This Court has personal jurisdiction over LAGSD because LAGSD conducts
15 business in the State of California, has its principal place of business in Carlsbad, California, and
16 has caused injuries within this County through its acts and omissions and by and through its
17 violations of the Labor Code.

18 6. Venue is proper because LAGSD has its principal place of business is in the
19 County of San Diego, transacts business that is the subject of this lawsuit in this County, and
20 because the cause of action accrued within this County, and because LAGSD is otherwise within
21 this Court’s jurisdiction. The unlawful acts alleged herein have a direct effect on Plaintiff and
22 other aggrieved employees within this County.

23 **PARTIES**

24 7. Plaintiff resides in, and at all times relevant to this complaint resided in, the County
25 of San Diego, California.

26 8. LAGSD is a corporation organized under the laws of the State of California, with is
27 principal place of business in Carlsbad, California.

28 9. Plaintiff is ignorant of the true names and capacities of all the defendants sued in

1 this complaint as Does 1 through 50 and, therefore, sue these defendants by these fictional names.
2 Plaintiff will amend this Complaint to allege the true names and capacities of each of the Doe
3 defendants when ascertained. Plaintiff is informed and believes and thereupon alleges that each of
4 the fictitiously named Doe defendants is responsible in some manner for the occurrence herein
5 alleged, and that Plaintiff’s damages as herein alleged were actually and proximately caused by
6 such defendants.

7 **FACTUAL ALLEGATIONS**

8 **LAGSD Classified All its Coaches as Independent Contractors**

9 10. LAGSD describes itself as “the largest soccer club in Northern San Diego County.
10 LA Galaxy San Diego is the exclusive San Diego County affiliate of LA Galaxy.”
11 (<https://lagalaxysd.com/about/>, last accessed December 15, 2019.) Moreover, LAGSD describes
12 the services it offers as “we offer a seamless player pathway and comprehensive soccer curriculum
13 for players of every age, every level and every aspiration.” *Id.* LAGSD also states on its website
14 that “[w]e believe that providing our players with the proper training and resources empowers
15 them to achieve their best potential, which fosters individual and team success.” *Id.*

16 11. As referenced above, LAGSD is an exclusive affiliate of the Major League Soccer
17 team known as the LA Galaxy. LAGSD notes, again on its website, that “we work closely with
18 LA Galaxy and their professional staff to provide the best possible soccer experience for our
19 players, their families and our local community. The goal of the partnership is to carry out a
20 commitment to coaching education, player development, The Alliance Club program allows
21 us to provide an unprecedented level of professional training for our coaches, unique exposure and
22 training opportunities for our players.” *Id.* (emphasis added).

23 12. Thus, LAGSD’s singular purpose is to provide soccer coaching, training and
24 development services to players that are accepted into the club’s system. Of course, the providers
25 of these services are LAGSD’s coaches.

26 13. LAGSD hires coaches for each of its teams. There are currently more than 100
27 LAGSD teams within various “programs” offered by the club. According to the club’s website,
28 there are approximately 55 current LAGSD coaches (which we believe is approximately the same

1 number of coaches working while Plaintiff coached for LAGSD). LAGSD hires these coaches as
2 purported independent contractors, requiring them to sign independent contractor agreements that
3 include non-competition/solicitation agreements, one-sided indemnification clauses (requiring the
4 contractor to indemnify LAGSD) and a clause requiring coaches to pay for their own expenses
5 incurred in the course of performing their coaching duties for LAGSD.

6 14. LAGSD, and its affiliate partner the LA Galaxy, an MLS professional soccer club,
7 required coaches for LAGSD and other affiliate clubs to attend mandatory coaching training in
8 Los Angeles at LA Galaxy's facilities. LAGSD also maintained a "Continuing Coach Education
9 Program," with mandatory education and training events throughout the year.

10 15. LAGSD set the schedules for camps, practices and tournaments. LAGSD provided
11 and required coaches to wear LAGSD branded clothing while coaching.

12 16. Plaintiff initially was a coach and fitness director for one of LAGSD's predecessors
13 in interest, the Carlsbad Wave. We are informed and believe Carlsbad Wave merged with another
14 club, the Carlsbad Lightning, in December 2013, to become Carlsbad United FC. Notably, while
15 he coached for the Wave, Plaintiff was a W2 employee. Plaintiff continued to work as a coach and
16 fitness director at Carlsbad United FC.

17 17. In or around 2014, Carlsbad United FC. became an affiliate youth club of LA
18 Galaxy and began operating as "LA Galaxy San Diego."

19 18. Soon after the formation of Carlsbad United FC., the club informed many of its
20 coaches that they would need to become independent contractors to avoid higher overhead costs,
21 such as payroll taxes.

22 19. At least as early as January 2017, LAGSD required its coaches to sign a non-
23 compete agreement.

24 20. During the time Plaintiff coached for LAGSD, he typically worked 36-37 hours a
25 week, except during the busy summer season and the months surrounding it, he would often work
26 longer hours, regularly working more than 40 hours a week and often working days in excess of 8-
27 12 hours a day.

28 21. For the term of his most recent contract with LAGSD, the club paid Plaintiff a

1 contractors for the purposes of the wage orders adopted by California’s Industrial Welfare
2 Commission (“IWC”). The Court’s test, which has come to be known as the “ABC test, provides
3 that a hiring entity must establish *all* of the following factors to support the classification of a
4 worker as an independent contractor:

5 A) that the worker is free from the control and direction of the hiring entity in
6 connection with the performance of the work, both under the contract for the
performance of the work and in fact;

7 B) that the worker performs work that is outside the usual course of the hiring
8 entity's business; and

9 C) that the worker is customarily engaged in an independently established trade,
10 occupation, or business.

11 *Dynamex*, 4 Cal. 4th at 964.

12 26. Under the ABC test, it is clear that Plaintiff – and every other coach for LAGSD –
was misclassified.

13 a. Plaintiff was not “free from the control and direction of” LAGSD. He was
14 required to attend mandatory training sessions, which educated and directed
15 coaches on how to coach their teams. Moreover, LAGSD employs
16 “Directors of Coaching,” who maintain a significant amount of control over
17 how coaching services are provided.

18 b. In addition, and most glaringly, Plaintiff also clearly performs work that is
19 directly within the usual course of LAGSD’s business – coaching youth
20 soccer players.

21 c. Finally, coaching is not an independently established trade, occupation or
22 business.

23 27. Furthermore, even under the standard that was applicable prior to *Dynamex*,
24 LAGSD cannot properly classify its coaches as independent contractors. See *Borello v. Dep’t of*
25 *Industrial Relations*, 48 Cal.3d 341 (1989). Similar to the analysis under the current standard,
26 consideration of those factors leads to the inevitable conclusion that the chargers should be
27 considered employees. LAGSD has significant control or the right to control coaches both as to
28 the work done and the manner and means in which it is performed. Coaches are not performing

1 services in an occupation or business distinct from LAGSD and – indeed – coaching is an integral
2 part of LAGSD’s regular business. LAGSD’s website makes it clear that its whole purpose is to
3 develop its soccer players through their coaching staff. Therefore, LAGSD’s coaches would be
4 misclassified under the pre-*Dynamex* analysis as well.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Private Attorneys’ General Act, Cal. Labor Code §§ 2098 *et seq.*)**

7 **By Plaintiff in his Representative Capacity against All Defendants**

8 28. Plaintiff re-alleges and incorporates all allegations contained in the preceding
9 paragraphs herein by reference as if fully set forth in this cause of action.

10 29. At all times herein mentioned, LAGSD and Doe Defendants were subject to the
11 Labor Code of the State of California.

12 30. California Labor Code § 2699(a) specifically provides for a private right of action
13 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
14 law, any provision of this code that provides for a civil penalty to be assessed and collected by the
15 Labor and Workforce Development Agency or any of its departments, divisions, commissions,
16 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered
17 through a civil action brought by an aggrieved employee on behalf of himself or herself and other
18 current and former employees.” Such civil penalties are in addition to any other relief provided
19 under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-
20 five percent (25%) to the aggrieved employees pursuant to section 2699(i).

21 31. During all, or a portion of, the one-year period before Plaintiff filed notice of his
22 claims with the LWDA, Plaintiff, and each of the other aggrieved employees, were employed by
23 Defendant in the State of California.

24 32. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by LAGSD
25 during the applicable statutory period and suffered one or more of the Labor Code violations set
26 forth herein.

27 33. Plaintiff has complied with the notice requirements outlined in Labor Code
28 §2699.3. On April 19, 2019, Plaintiff submitted notice to the LWDA and LAGSD informing them

1 of LAGSD's alleged Labor Code violations pursuant to PAGA. The LWDA had 65 days to
2 provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has
3 not provided notice of whether it intends to investigate the alleged violations. Plaintiff thus has the
4 right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to
5 Labor Code § 2699.3.

6 34. Plaintiff asserts that LAGSD willfully misclassified him and the other aggrieved
7 employees as independent contractors when they should instead have been properly classified as
8 non-exempt employees and are therefore subject to the protections of the Labor Code and relevant
9 IWC Wage Orders.

10 35. As a result of this practice, Plaintiff seeks civil penalties pursuant to PAGA for
11 violations of the following California Labor Code provisions:

- 12 a. Willfully misclassifying the aggrieved employees as independent
13 contractors in violations of Labor Code §§ 226.8(a) and 3353;
- 14 b. Improperly classifying the aggrieved employees as exempt employees in
15 violation of California Law and relevant IWC Wage Orders;
- 16 c. Failure to pay minimum wages and overtime compensation in violation of
17 Labor Code §§ 204, 226.2, 210, 510, 1194, 1197, 1197.1, 1198, and
18 relevant IWC Wage Orders;
- 19 d. Failure to provide legally compliant meal periods or compensation in lieu
20 thereof in violation of Labor Code § 226.7, 512 and relevant IWC Wage
21 Orders;
- 22 e. Failure to provide legally compliant rest periods or compensation in lieu
23 thereof in violation of Labor Code §226.7 and relevant IWC Wage Orders;
- 24 f. Failure to reimburse for necessary work expenses in violation of Labor
25 Code §§ 2800, 2802, and relevant IWC Wage Orders;
- 26 g. Failure to pay wages owed and required waiting time penalties in violation
27 of Labor Code § 201-203;
- 28 h. Failure to furnish accurate itemized wage statements in violation of Labor

Code § 226, 226.2, and relevant IWC Wage Orders

- i. Failure to keep required payroll records in violation of Labor Code § 1174, 226(a) and relevant IWC Orders;
- j. Failure to pay all wages when due twice each calendar month in violation of Labor Code § 204 and 558;
- k. Requiring aggrieved employees to work for longer hours than those fixed under conditions of labor prohibited by an order of the Labor Commission and/or violating or refusing or neglecting to comply with provisions of the California Labor Code regarding aggrieved employees' wages, hours and working conditions, in violation of Labor Code sections 1199(a), 1199(c) and 2699.5, *et seq.*;
- l. Requiring employees to sign agreements or statements, including non-competition agreements, that LAGSD knew were prohibited by law; and
- m. Failure to provide provide employees with basic information material to their employment at the time of hiring, including written notice that lists all the requisite information set forth in Labor Code section 2810.5, and failure to ensure that employees are given written, timely notice of any changes to basic information material to their employment.

36. Labor Code § 226.8(b) imposes a civil penalty of not less than \$5,000 and not more than \$15,000 for each violation of Labor Code § 226.8(a). Additionally, when an employer has engaged in or is engaging in a pattern of practice of violation of Labor Code § 226.8(a), pursuant to Labor Code § 226.8(c), a civil penalty of not less than \$10,000 and not more than \$25,000 is imposed for each violation.

37. With respect to violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided by law of \$250.00 per aggrieved employee for the first violation, and \$1,000.00 per aggrieved employee for each subsequent violation of Labor Code § 226(a).


38. With respect to violations of Labor Code §§ 510 and 512, Labor Code § 558

3. For an award of civil penalties pursuant to Private Attorneys' General Act and/or any other applicable law;
4. For reasonable attorneys' fees and costs pursuant to applicable law;
5. For pre-judgment and post-judgment interest as provided by law;
6. For costs of suit herein; and
7. For such further relief as this Court may deem just and proper.

Respectfully submitted,

Dated: December 15, 2019

SMALL LAW PC

By: 

William F. Small III
Attorneys for Plaintiff
MINDES DORLEAN