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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

TERRI GIBSON and all other aggrieved employees,	)	CASE NO. 5:20-cv-00318-ODW-SP
	)	
Plaintiff,	)	SECOND AMENDED COMPLAINT
	)	FOR PAGA PENALTIES
v.	)	
	)	
SWIFT TRANSPORTATION CO. OF ARIZONA, LLC, SWIFT TRANSPORTATION SERVICES, LLC, and DOES 1 to 10, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	

Plaintiff Terri Gibson ("Plaintiff"), on behalf of herself and all other aggrieved employees, hereby states her cause of action against Defendants Swift Transportation Co. of Arizona, LLC, Swift Transportation Services, LLC., and DOES 1-10, inclusive, (collectively "Defendants") as follows:

RELEVANT PARTIES

1. Plaintiff Terri Gibson is a resident of San Bernardino County, State of California, and was at all times relevant residing in Victorville, California. At all times relevant, Plaintiff was an employee of Defendants.

2. The “Aggrieved Employees” are all current or former non-exempt, non-truck driver employees of Defendants employed in the State of California within one year prior to the date that Plaintiff filed her Private Attorney’s General Act (“PAGA”) claim notice, claim number LWDA-CM-769852-20, through the date of the final disposition of this action, and who were aggrieved of any of the Labor Code violations alleged herein. Plaintiff intends to bring this action on behalf of the Aggrieved Employees and as a proxy for the State of California.

3. Defendant Swift Transportation Co. of Arizona, LLC is a Delaware limited liability company with its principal place of business located in Phoenix, Arizona. Defendant Swift Transportation Co. of Arizona is registered to, and does, conduct business within the State of California. Any acts or omissions of Swift Transportation Co.’s employees as alleged herein occurred while they were working within the course and scope of their employment for Swift Transportation Co.

4. Defendant Swift Transportation Services, LLC is a Delaware limited liability company with its principal place of business located in Phoenix Arizona. Defendant Swift Transportation Services is registered to, and does, conduct business within the State of California. Any acts or omissions of Swift Transportation Services’ employees as alleged herein occurred while they were working within the course and scope of their employment for Swift Transportation Services.

5. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1 through 10, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is informed and believes, and based on such information and belief alleges, that each of the fictitiously named Doe Defendants has participated in some way in the wrongful acts and omissions alleged below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled.

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JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and the parties are citizens of different states.

7. The primary defendants are not States, State officials, or other governmental entities within the meaning of 28 U.S.C. § 1332(d)(5)(A).

8. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the acts or omissions giving rise to these claims occurred in the Central District of California.

GENERAL ALLEGATIONS

9. On January 30, 2020, Plaintiff sent a PAGA letter via certified mail to Defendants and uploaded the letter to the Labor and Workforce Development Agency (“LWDA”) website.

10. Because 65 days have passed since the date the PAGA notice was mailed, Plaintiff may now seek PAGA penalties.

11. At all times relevant, Plaintiff and the Aggrieved Employees were Defendants’ “employees.”

12. At all times relevant, Defendants, directly or indirectly, were the employers and/or joint employers of Plaintiff and the Aggrieved Employees.

13. At all times relevant, Defendants jointly determined, shared, or allocated the power to direct, control, or supervise Plaintiff and the Aggrieved Employees through direct and/or indirect means.

14. At all times relevant, Defendants formally and/or as a matter of practice, jointly determined, shared, or allocated the power to – directly or indirectly – hire or terminate Plaintiff and the Aggrieved Employees or to modify the terms of, or conditions of, their employment.

15. At all times relevant, either formally or as a matter of practice, Defendants jointly determined, shared, or allocated responsibility over functions ordinarily carried

1 out by an employer, such as handling payroll and providing the facilities, tools, or
2 materials necessary for Plaintiff and the Aggrieved Employees to complete their work.

3 16. Labor Code section 510 requires an employer to pay its employees “one and
4 one-half times the regular rate of pay” for all hours worked over eight in a day or 40
5 in a week.

6 17. Pursuant to 29 USC § 207(e), “the ‘regular rate’ [...] shall be deemed to include
7 all remuneration for employment paid to, or on behalf of, the employee”.

8 18. Plaintiff and the Aggrieved Employees were paid nondiscretionary bonuses on
9 a quarterly basis which should have been included in the calculation of their regular
10 rate of pay.

11 19. Specifically, when Plaintiff and the Aggrieved Employees earned quarterly
12 bonuses, the bonus should have been “apportioned back over the workweeks of the
13 period during which it may be said to have been earned.” (29 CFR § 778.209).
14 Thereafter, the overtime should have been recalculated for that period to include the
15 bonuses in the overtime compensation earned in that period.

16 20. When Plaintiff and the Aggrieved Employees worked over eight hours per day
17 or 40 hours in a week, Defendants did not include these nondiscretionary bonuses in
18 the calculation of their “regular rate of pay” for overtime purposes as required.

19 21. As a result of Defendants’ failure to include nondiscretionary bonuses in
20 Plaintiff’s and the Aggrieved Employees’ regular rate of pay, it failed to pay all
21 overtime compensation owed.

22 22. During Plaintiff and the Aggrieved Employees’ tenure of employment,
23 Defendants unlawfully required them to work for more than five hours in a day without
24 providing a compliant meal period of at least 30 minutes, in violation of Labor Code
25 section 512.

26 23. In addition to its failure to provide Plaintiff and the Aggrieved Employees with
27 compliant meal breaks, Defendants also failed to pay the them one hour of pay in lieu
28 of a missed meal break as required by Labor Code section 226.7.

24. Furthermore, Defendants regularly failed to provide Plaintiff and the Aggrieved Employees with statutorily compliant rest breaks and likewise failed to pay them one hour of premium pay in lieu of missed rest breaks.

25. At all times relevant, Defendants maintained and enforced a uniform policy by which it regularly and consistently failed to provide Plaintiff and the Aggrieved Employees with complete and accurate itemized wage statements which accurately stated the total hours worked, amount of overtime wages earned, premium wages owed for missed rest and meal periods, or the correct name of the employer.

26. Defendants knew, or should have known, that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law, and that, in violation of the California Labor Code, they were not provided complete and accurate wage statements.

27. Subsequent to ending their tenure of employment with Defendants, Plaintiff the Aggrieved Employees never received outstanding compensation due and owing to them and never received waiting time penalties pursuant to Labor Code section 203.

FIRST CAUSE OF ACTION

PAGA PENALTIES

By Plaintiff and the Aggrieved Employees Against All Defendants

28. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the paragraphs above.

29. Plaintiff brings this cause of action on behalf of the Aggrieved Employees and as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for the violations of the California Labor Code detailed above, and incorporated herein by reference.

30. On January 30, 2020, Plaintiff sent written notice to the LWDA of Defendants' violations of the California Labor Code, as set forth above. The LWDA claim number associated with that notice is LWDA-CM-769852-20.

31. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and

1 all applicable civil penalties for Defendants' violations of the California Labor Code
2 detailed above.

3 32. The recoverable PAGA penalties during the PAGA period, which is from
4 January 30, 2019 through the date of final disposition of this action, are the following:

5 33. For the wage statement violations, the civil penalties of Labor Code section
6 226.3 apply.

7 34. For the overtime violations, the civil penalties in Labor Code sections 558,
8 1194.2, and 1197.1 apply.

9 35. For the meal and rest break violations, the civil penalties in Labor Code sections
10 558 and 2699 apply.

11 36. For the waiting time penalty violation, the civil penalties in Labor Code section
12 2699 apply.

13 37. Plaintiff is also entitled to attorney's fees and costs when PAGA penalties are
14 recovered.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, on behalf of herself and the members of the putative class, prays for
17 relief as follows:

18 A) As to the First Cause of Action: Civil penalties pursuant to Labor Code sections
19 226.3, 558, 1194.2, 1197.1, and 2699; attorney fees and costs; and all other relief the
20 court deems proper.

21
22 Date: May 6, 2020

FRONTIER LAW CENTER

23
24 /s/ Adam Rose
25 Attorney for Plaintiff
26 Terri Gibson
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