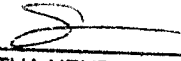


FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 10 2020

BY 
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RENALDO GONZALES, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

DURHAM SCHOOL SERVICES, L.P.;
NATIONAL EXPRESS TRANSIT; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: CIVDS2009070

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §
226(a)
- (2) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*;

DEMAND OVER \$25,000.00

1 Plaintiff Renaldo Gonzales (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendants Durham School Services,
3 L.P. and National Express Transit, and Does 1 through 50 (hereinafter collectively referred to as
4 “Defendants”) on behalf of himself and other similarly situated current and former employees of
5 Defendants for penalties for violation of the California Labor Code, including without limitation,
6 failure to provide accurate itemized wage statements and pay earned wages in a timely manner,
7 as follows:

8 **INTRODUCTION**

9 1. This class and representative action is within the Court’s jurisdiction under
10 California Labor Code sections 204, 226 and 2698 *et seq.*

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees in Defendants’ failure to provide accurate itemized wage
16 statements and pay earned wages in a timely manner.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code,
19 by creating and maintaining policies, practices and customs that knowingly deny employees the
20 above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of California Labor Code sections
23 204, 226 and 2698 *et seq.*

24 6. Venue is proper in San Bernardino County because Defendants operate and
25 maintain operations in San Bernardino County, and Plaintiff was employed by Defendants in San
26 Bernardino County.

27 **PARTIES**

28 7. Plaintiff worked for Defendants from in or around August 2018 to on or about

1 January 24, 2020. Defendants contend Plaintiff was never employed by Durham School
2 Services, L.P. Based on such contention, Plaintiff alleges that Defendants' wage statements
3 failed to identify the accurate legal name of the employer.

4 8. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 herein mentioned Durham School Services, L.P., National Express Transit and Does 1 through
6 50, are and were business entities, individuals, and partnerships, licensed to do business and
7 actually doing business in the State of California. As such, and based upon all the facts and
8 circumstances incident to Defendants' business, Defendants are subject to California Labor Code
9 sections 204, 226 and 2698 *et seq.*

10 9. Plaintiff does not know the true names or capacities, whether individual, partner
11 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
12 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
13 complaint when the true names and capacities are known. Plaintiff is informed and believes and
14 based thereon alleges that each of said fictitious defendants was responsible in some way for the
15 matters alleged herein and proximately caused Plaintiff, Class Members and aggrieved
16 employees to be subject to the illegal employment practices, wrongs and injuries complained of
17 herein.

18 10. At all times herein mentioned, each of said defendants participated in the doing of
19 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants and employees of each of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
22 acting within the course and scope of said agency and employment.

23 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
25 joint venturer of, or working in concert with each of the other co-Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity. To
27 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
28 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting

Defendants.

12. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

13. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

14. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure section 382. Plaintiff proposes the following class: all current and former California employees of Defendants who were paid wages at any time between April 6, 2019, through the present (the "Class" or "Class Members").

15. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide accurate itemized wage statements in violation of Labor Code section 226.

16. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

17. Defendants uniformly administered a corporate policy, practice of failing to

1 provide accurate itemized wage statements in violation of Labor Code section 226. Plaintiff is
2 informed and believes, and based thereon alleges, that this corporate conduct is accomplished
3 with the advanced knowledge, intent and willfulness.

4 18. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
6 concerning Defendants’ policy and practice of failing to provide accurate itemized wage
7 statements in violation of Labor Code section 226.

8 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
9 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
10 as the Class Members. As with other California employees, Plaintiff was not provided proper and
11 accurate itemized wage statements. Specifically, Defendants contend Plaintiff was never
12 employed by Durham School Services, L.P. Based on such contention, Plaintiff alleges that
13 Defendants’ wage statements failed to identify the accurate legal name of the employer because
14 the wage statements identified “Durham School Services, L.P.” as the employer. Therefore,
15 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
16 Code section 226.

17 20. The California Labor Code sections upon which Plaintiff bases these claims are
18 broadly remedial in nature. These laws and labor standards serve an important public interest in
19 establishing minimum working conditions and standards in California. These laws and labor
20 standards protect the average working employee from exploitation by employers who may seek
21 to take advantage of superior economic and bargaining power in setting onerous terms and
22 conditions of employment.

23 21. The nature of this action and the format of laws available to Plaintiff and
24 members of the Class identified herein make the class action format a particularly efficient and
25 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
26 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
27 advantage since it would be able to exploit and overwhelm the limited resources of each
28 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class

1 member to pursue an individual remedy would also discourage the assertion of lawful claims by
2 employees who would be disinclined to file an action against their former and/or current
3 employer for real and justifiable fear of retaliation and permanent damage to their careers at
4 subsequent employment.

5 22. The prosecution of separate actions by the individual Class Members, even if
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
7 to individual Class Members against the Defendants and which would establish potentially
8 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
9 individual Class Members which would, as a practical matter, be dispositive of the interest of the
10 other Class Members not parties to the adjudications or which would substantially impair or
11 impede the ability of the Class Members to protect their interests. Further, the claims of the
12 individual members of the Class are not sufficiently large to warrant vigorous individual
13 prosecution considering all of the concomitant costs and expenses.

14 23. Such a pattern, practice and uniform administration of corporate policy regarding
15 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
16 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
17 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
18 *et seq.*, and Code of Civil Procedure section 1021.5.

19 24. Proof of a common business practice or factual pattern, which the named Plaintiff
20 experienced and is representative of, will establish the right of each of the members of the
21 Plaintiff Class to recovery on the causes of action alleged herein.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226**

24 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

25 25. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 as
26 though fully set forth herein.

27 26. Defendants, as a matter of policy and practice, failed to provide accurate itemized
28 wage statements in violation of Labor Code section 226.

27. Labor Code section 226(a)(8) requires that an employer provide employees with wage statements that show the name and address of the legal entity that is the employer. Here, Defendants contend Plaintiff was never employed by Durham School Services, L.P. Based on such contention, Plaintiff alleges that Defendants' wage statements failed to identify the accurate legal name of the employer. The wage statements issued by Defendants to Plaintiff and Class Members identified "Durham School Services, L.P." as the employer.

28. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for all penalties pursuant to Labor Code section 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF, ON BEHALF OF THE STATE AND THE
AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 28 as though fully set forth herein.

30. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all current and former employees who worked for Defendants in the State of California from March 12, 2019, through the present (“Aggrieved Employees”), for Defendants’ violations of Labor Code sections 204 and 226.

31. Defendants failed in their affirmative obligation to timely pay wages to exempt Aggrieved Employees. Defendants, as a matter of policy and practice, paid exempt Aggrieved Employees on a bi-weekly basis and thus are subject to the timing requirements of Labor Code section 204. As a pattern and practice, Defendants had a consistent policy of paying the wages of exempt Aggrieved Employees beyond the time limits as allowed pursuant to Labor Code section 204.

32. Additionally, Defendants, as a matter of policy and practice, failed to provide

1 accurate itemized wage statements to Aggrieved Employees in violation of Labor Code section
2 226. Labor Code section 226(a)(8) requires that an employer provide employees with wage
3 statements that show the name and address of the legal entity that is the employer. Here,
4 Defendants contend Plaintiff was never employed by Durham School Services, L.P. Based on
5 such contention, Plaintiff alleges that Defendants' wage statements failed to identify the accurate
6 legal name of the employer. The wage statements issued by Defendants to Plaintiff and
7 Aggrieved Employees identified "Durham School Services, L.P." as the employer.

8 33. On or about March 12, 2020, Plaintiff sent written notice to the California Labor
9 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code section
10 204, pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act ("PAGA").
11 On or about August 7, 2020, Plaintiff sent a supplemental written notice to the LWDA of
12 Defendants' violation of Labor Code section 226(a). To date, the LWDA has not responded to
13 Plaintiff's written notices.

14 34. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
15 and all applicable civil penalties for Defendants' violation of Labor Code sections 204 and 226,
16 for the time period described above, on behalf of himself and other Aggrieved Employees.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
19 this suit is brought against Defendants, jointly and severally, as follows:

- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiff as the representative of the Class as described
22 herein;
- 23 3. Upon the First Cause of Action, for penalties pursuant to California Labor Code
24 section 226, and for costs and attorneys' fees;
- 25 4. Upon the Second Cause of Action, for civil penalties according to proof pursuant
26 to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;
- 27 5. For attorneys' fees and costs as provided by California Labor Code sections 204,
28 226 and 2699, and Code of Civil Procedure section 1021.5; and

1 6. For such other and further relief the Court may deem just and proper.

2
3 DATED: August 10, 2020

DIVERSITY LAW GROUP P.C.

4
5 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

6
7 Attorneys for Plaintiff, the Class and the Aggrieved
8 Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On August 10, 2020, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES**
12 on the interested parties in this action as follows:

13 CT Corporation System
14 818 West Seventh St. Suite 930
15 Los Angeles, CA 90017
16 Agent for Service of Process for
17 *Durham School Services, L.P. and*
18 *National Express Transit*

19 X BY MAIL: by placing _____ the original or X a true and correct
20 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
21 attached mailing list. I am readily familiar with the firm's practice for collection and processing
22 of correspondence and other materials for mailing with the United States Postal Service. On this
23 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
24 collection and mailing on this date at the address above following our office's ordinary business
25 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
26 in the ordinary course of business.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on August 10, 2020, at Los Angeles, California.

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