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

JUN 11 2020

BY 
DEVIN K. SMITH

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN BERNARDINO

17 DEVIN K. SMITH, an individual in his
18 representative capacity on behalf of all
19 Aggrieved Employees;

20 Plaintiff,

21 v.

22 DI LOGISTICS, LLC, a California
23 Limited Liability Company, and DOES 1
24 through 50,

25 Defendants.

Case No. **CIV DS 2011469**
) **REPRESENTATIVE ACTION**
)
) **COMPLAINT –**
) **FOR VIOLATIONS OF THE**
) **PRIVATE ATTORNEYS**
) **GENERAL ACT OF 2004**
) **(LABOR CODE SECTION 2698,**
) **ET SEQ.)**

1 Plaintiff DEVIN K. SMITH (“Plaintiff”) on behalf of himself and acting for the
2 interests of other current and former employees (cumulatively “Plaintiffs” or
3 “Aggrieved Employees”) hereby alleges against DI LOGISTICS, LLC (hereinafter,
4 “Defendant” or “DI LOGISTICS”) as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action to recover civil penalties
7 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
8 Section 2698, *et seq.*, on behalf of the State of California, himself, and all other
9 Aggrieved Employees of Defendant seeking only PAGA civil penalties (no wages
10 and no individualized relief), reasonable attorneys’ fees, and costs within the meaning
11 of *Esparza v. KS Indus., L.P.* (2017) 13 Cal.App.5th 1228.

12 2. Plaintiff and Aggrieved Employees are Defendant’s current and former
13 employees in California who worked from March 12, 2019 to the present.

14 3. As set forth in more detail below, Plaintiff and other Aggrieved
15 Employees were subject to Defendant’s unlawful policies and practices, which
16 resulted in inaccurate and incomplete pay statements, unreimbursed expenses, and
17 other violations of the Labor Code.

18 4. Plaintiff seeks, on behalf of himself, all other Aggrieved Employees and
19 the State of California, civil penalties and attorneys’ fees and costs.

20 **JURISDICTION AND VENUE**

21 5. Pursuant to Article VI, § 10 of the California Constitution, subject matter
22 jurisdiction is proper in the Superior Court of California, County of San Bernardino,
23 State of California because Plaintiffs allege claims arising under California law.

24 6. This Court has jurisdiction over the Defendants because each is an
25 association, corporation, business entity, or individual that conducts business in the
26 State of California, County of Bernardino.

27 7. Pursuant to § 395 of the California Code of Civil Procedure, venue is
28 proper in the Superior Court of California for the County of San Bernardino because

1 this is where Plaintiff resides and is where a substantial amount of the wrongful
2 misconduct alleged in this Complaint occurred.

3 **PARTIES**

4 8. Plaintiff DEVIN K. SMITH is an individual over the age of 18, and at all
5 times relevant herein was a resident of the County of San Bernardino, California.

6 9. From on or about May 22 2019 to June 30, 2019, Defendant employed
7 Plaintiff as a distribution driver.

8 10. Defendant DI LOGISTICS, LLC is a California limited liability
9 company doing business in the County of San Bernardino, California.

10 11. The true names and capacities, whether individual, corporate, associate,
11 or otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
12 Plaintiffs at this time. Plaintiffs therefore sue said Defendants by such fictitious
13 names pursuant to § 474 of the California Code of Civil Procedure. Plaintiffs will
14 seek leave to amend this Complaint to allege the true names and capacities of DOES
15 1 through 50 when the correct identities are ascertained. Plaintiffs are informed and
16 believe, and based thereon allege, that each of the DOE Defendants is in some
17 manner liable to Plaintiffs for the events and actions alleged herein. All named
18 Defendants and DOES 1 through 50 are collectively referred to as “Defendants.”.

19 12. Plaintiffs are informed and believe, and based thereon allege, that at all
20 times relevant herein each Defendant was acting as an agent, joint venture, or as an
21 integrated enterprise and/or alter ego for each of the other Defendants, and each was a
22 co-conspirator with respect to the acts and the wrongful conduct alleged herein, so
23 that each is responsible for the acts of the other in connection with the conspiracy and
24 in proximate connection with the other Defendants.

25 13. Plaintiffs are informed and believe, and based thereon allege, that each
26 Defendant was acting partly within and partly without the scope and course of their
27 employment, and was acting with the knowledge, permission, consent, and
28 ratification of every other Defendant.

14. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants was an agent, managing general partner, managing member, owner, co-owner, partner, employee, and/or representative of each of the Defendants, and were at all times material hereto, acting within the purpose and scope of such agency, employment, contract and/or representation, and that each of them are jointly and severally liable to Plaintiffs and the Aggrieved Employees for the acts alleged herein

15. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants are liable to Plaintiffs under legal theories and doctrines including but not limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter ego, based in part, on the facts set forth below.

16. Plaintiffs are informed and believe, and based thereon allege, that each of the named Defendants are part of an integrated enterprise and have acted or currently act as the employer and/or joint employer of Plaintiffs and Aggrieved Employees, making each of them liable for the wage and hour violations alleged herein.

FACTUAL ALLEGATIONS

17. Defendant owns and operates a package delivery and distribution business.

18. Defendant's general business activities involve, *inter alia*, receiving shipments from States outside of California, storing packages for a short period, and then tasking employees such as Plaintiff with the delivery of the goods to in-state customers.

19. Its employees transport and deliver the goods in their own personal vehicles.

20. Plaintiff delivered packages for Defendant throughout southern California including but not limited to the County of San Bernardino, typically picking up packages at various locations and delivering them to other locations in

1 southern California.

2 21. Defendant paid Plaintiff on an hourly and/or piece rate basis as a non-
3 exempt employee.

4 **Unreimbursed Work-Related Expense Claims**

5 22. During all times relevant, and pursuant to company policy and/or
6 practice and/or direction, Plaintiffs allege that Defendant failed to reimburse
7 Plaintiffs and Aggrieved Employees for the expenditures and losses they incurred in
8 the discharge of their employment duties.

9 23. For example, Plaintiff, at his own expense, maintained a cellular phone
10 with phone service and a data plan.

11 24. These expenses were necessary and incurred in the discharge of
12 Plaintiff's duties because Defendant required Plaintiff to use his personal phone to
13 communicate with Defendant, navigate to and from warehouses, pickup points, and
14 delivery points, photograph delivered items to prove completion, and transmit the
15 proof photographs to Defendant, among other things.

16 25. By way of further example, Defendant did not issue Plaintiff and
17 Aggrieved Employees vehicles to use in the delivery of the goods in question, instead
18 imposing these expenses on Plaintiff and Aggrieved Employees by requiring them to
19 deliver the goods using their own personal vehicles.

20 26. The expenditures and losses Plaintiff and Aggrieved Employees incurred
21 include, without limitation, the cost of their vehicles, fuel, maintenance costs,
22 insurance, repairs, depreciation, insurance, and other losses and expenditures.

23 27. Plaintiffs are informed and believe, and based thereon allege, that
24 Plaintiff and Aggrieved Employees received mileage reimbursement, but in an
25 amount below the mileage reimbursement rate set by the Internal Revenue Service.

26 28. These practices illustrate Defendant's violations of Labor Code section
27 2802, which requires employers to indemnify workers for all expenses incurred in the
28 discharge of their duties.

1 **Erroneous Wage Statements in Violation of Labor Code § 226**

2 29. During all times relevant, and pursuant to company policy and/or
3 practice and/or direction and continuing to the present, Defendants issued confusing
4 and inaccurate wage and earning statements to Plaintiffs, which wage and earning
5 statements failed to identify Plaintiffs' net pay and/or correct accurately state, among
6 other things, "(8) the name and address of the legal entity that is the employer..."

7 30. Specifically, Defendant failed to comply with Labor Code § 226(a),
8 including, without limitation, 226(a)(8), in that its wage statements provided to
9 Plaintiff failed to state the address of the employer.

10 31. Likewise, Defendant's paystubs failed to accurately state, among other
11 things, "(5) net wages earned..." inasmuch as the paystubs Defendant issued
12 unlawfully included mileage reimbursement as part of Plaintiffs' net wages when as a
13 matter of law reimbursements under Labor Code § 2802 are not considered wages.

14 32. Further, Defendant violated Labor Code § 226(a)(9), which requires an
15 employer to issue employees paystubs that accurately specific "all applicable hourly
16 rates in effect during the pay period and the corresponding number of hours worked
17 at each hourly rate by the employee..." because Plaintiff SMITH's paystub, for
18 example, said his overtime rate of pay was \$18 per hour, yet he worked no overtime
19 meaning that such rate of pay should have been omitted or alternatively the
20 corresponding number of hours adjacent to the overtime rate of pay should have said
21 "0" and should not have been blank.

22 33. These are a few of many similar examples of inaccurate paystubs
23 Defendants issued to Plaintiffs.

24 34. Plaintiffs are informed and believe, and based thereon allege, that
25 Plaintiffs are not the only victims to these inaccuracies and they allege there are
26 numerous additional aggrieved employees.

27 35. In addition to the foregoing stand-alone claim under Labor Code § 226,
28 Plaintiffs' paystubs and those of other aggrieved employees of Defendants were

1 inaccurate because Defendants failed to pay them all wages, as alleged in this
2 Complaint, supporting a derivative claim under Labor Code § 226.

3 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

4 36. This wage and hour representative action filed pursuant to PAGA, §§
5 2698, 2699 generally consists of the following group:

6 **All current or former employees who worked for the Defendants in the**
7 **state of California from March 12, 2019 to the present.**

8 37. All members of the represented group will be referred to as the
9 “Aggrieved Employees.”

10 38. The “Representative Period” means from **March 12, 2019**, to the
11 present.

12 39. California law provides that an employee may file an action against an
13 employer for penalties in connection with violations of the Labor Code and Wage
14 Orders on behalf of him or herself and other aggrieved current and former employees.

15 40. At all material times, Defendants and DOES 1 through 50 were and/or
16 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
17 Employees’ employer, within the meaning of California Labor Code § 558, who
18 violated or caused to be violated, a section of Part 2, Chapter 1 of the California
19 Labor Code or any provision regulating hours and days of work in any Order of the
20 Industrial Welfare Commission and, as such, are subject to penalties for each
21 underpaid employee as set for in Labor Code § 558.

22 41. As set forth in further detail below, as a result of the analysis and
23 investigation of the Plaintiff’s claims, Plaintiff’s attorneys sent letters to the
24 California Labor and Workforce Development Agency (hereinafter referred to as
25 “LWDA”) and to Defendants informing Defendants of his claims and his intent to
26 pursue litigation.

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43. On April 13, 2020, Defendant sent an alleged notice of cure to the LWDA.

45. On May 27, 2020, Plaintiffs sent correspondence to the LWDA disputing Defendant's contention the alleged Labor Code violations were cured.

47. Notwithstanding the foregoing, more than 65 days have elapsed since Plaintiffs' filing and service of the March 12, 2020 correspondence and the LWDA did not send notice per the Labor Code § 2699.3(a)(2)(B).

49. The Causes of Action alleged herein are appropriately suited for a Representative Action under PAGA (Labor Code § 2698, *et seq.*) because:

b. Plaintiffs are “aggrieved employees” because Plaintiffs were employed by the alleged violator and had one or more of the Labor

1 Code violations alleged on this Complaint committed against them; and
2 c. Plaintiffs have satisfied the procedural requirements of Labor Code
3 § 2699.3, as set forth above.

4 **FIRST CAUSE OF ACTION**

5 **Representative Claim for PAGA Penalties**

6 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
7 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**
8 **and the applicable IWC Wage Order**

9 (Against all Defendants)

10 50. Plaintiffs re-allege and incorporate by reference the foregoing
11 allegations as though set forth herein.

12 51. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
13 pertinent part, that every employer shall, “semimonthly or at the time of each
14 payment of wages, shall furnish to his or her employees, either as a detachable part of
15 the check, draft, or voucher paying the employee's wages, or separately if wages are
16 paid by personal check or cash, an accurate itemized statement in writing showing (1)
17 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
18 piece-rate units earned and any applicable piece rate if the employee is paid on a
19 piece-rate basis, (4) all deductions, provided that all deductions made on written
20 orders of the employee may be aggregated and shown as one item, (5) net wages
21 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and only the last four digits of his or her social security
23 number..., (8) the name and address of the legal entity that is the employer. . . , and
24 (9) all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate by the employee and, beginning July 1,
26 2013, if the employer is a temporary services employer as defined in Section 201.3,
27 the rate of pay and the total hours worked for each temporary services assignment. . .”
28 (Labor Code § 226 subdivision (a).)

1 52. Upon information and belief, during all times relevant to this action,
2 Defendants did not provide accurate wage statements throughout the Representative
3 Period and, thus, Plaintiffs assert this claim both as a stand-alone claim and derivative
4 of their unpaid wage claims.

5 53. On numerous occasions, an exact amount by which will be proven at
6 trial, Defendants violated various provisions of § 226, including but not limited to
7 subdivisions (a)(1), (a)(2), (a)(4), (a)(5), and (a)(9) by failing to provide Plaintiffs and
8 the Aggrieved Employees accurate itemized statements in writing accurately showing
9 gross wages earned, total hours worked by the employee, net wages earned, and rates
10 of pay, among other things.

11 54. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
12 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
13 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
14 pay period for each subsequent violation in which all culpable Defendants violated
15 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact
16 amount of the applicable penalty in an amount to be shown according to proof at trial.

17 55. Cal. Labor Code § 226.3 imposes upon all culpable Defendants a penalty
18 of two hundred fifty dollars (\$250.00) for each aggrieved employee per pay period
19 for the initial violation and one thousand dollars (\$1,000.00) for each aggrieved
20 employee per pay period for each subsequent violation in which all culpable
21 Defendants violated the applicable Cal. Labor Code provisions alleged in this
22 Complaint, the exact amount of the applicable penalty in an amount to be shown
23 according to proof at trial.

24 56. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
25 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
26 costs incurred herein under §§ 226, 226.3, and 226.6 in an amount to be proven at
27 trial.
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1 time of trial.

2 64. Defendants derived an unjust and inequitable economic benefit in failing
3 to comply with the law regarding indemnification and reimbursement of employees.

4 65. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
5 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
6 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
7 pay period for each subsequent violation in which all culpable Defendants violated
8 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact
9 amount of the applicable penalty in an amount to be shown according to proof at trial.

10 66. For the reasons alleged herein, Plaintiffs seek all available remedies
11 pursuant to PAGA in an amount to be proven at trial including but not limited to
12 penalties, attorneys' fees, costs, and interest pursuant to law.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

15 1. That the Court find that Defendants' violations as described above are
16 found to have been willful;

17 2. For all remedies available to Plaintiff under the applicable Industrial
18 Welfare Commission Order including but not limited to Wage Order Numbers 4-
19 2001, 5-2001, 15-2001, and Labor Code §§ 226, 226.3, 226.6, 558, 558.1, and 2802
20 via § 2698, *et seq.* including an award of attorneys' fees, costs, interest, liquidated
21 damages, damages, and penalties according to proof to the extent permitted by law;

22 3. For maximum civil penalties available under the Labor Code and
23 applicable Wage Order as described more particularly in this Complaint,
24 representative PAGA claims as set forth in Labor Code § 558;

25 4. That Plaintiff and/or Aggrieved Employees be awarded reasonable
26 attorneys' fees where available by law, including but not limited to pursuant to Labor
27 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other applicable
28 laws; and

1 5. For such other and further relief as this Court may deem proper and
2 just.

3 DATED: June 5, 2020

THE LAW OFFICE OF IAN PANCER

By: Ian Pancer

Ian Pancer, Esq.

Attorneys for Plaintiff Devin K. Smith
and the Aggrieved Employees