

COPY

ACKERMANN & TILAJEF, P.C.

Craig J. Ackerman, CA Bar No. 229832

cja@ackermanntilajef.com

Sam Vahedi, CA Bar No. 282660

sv@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Tel: (310) 277-0614

Fax: (310) 277-0635

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

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LAW OFFICE OF TATIANA HERNANDEZ, P.C.

Tatiana Hernandez, Esq. (State Bar No. 255322)

tatiana@thlawpc.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Tel: (213) 909-4248

Fax: (310) 388-0639

BY Jovanna Leandro
JOVANNA LEANDRO, DEPUTY

INDIA LIN BODIEN, ATTORNEY AT LAW

India Lin Bodien, Esq. (*pro hac vice* application forthcoming)

india@indialinbodianlaw.com

2522 North Proctor Street, #387

Tacoma, Washington 98406-5338

Tel: (253) 212-7913

Fax: (253) 276-0081

Attorneys for Plaintiff and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CIV SB 2101902

ADRIAN VALLE PADILLA, an individual, on
behalf of herself and others similarly situated,

Case No. _____

**CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

PLAINTIFF,

v.

COPPELL TRANSPORT, INC., a Texas
Corporation; OTD LOGISTICS
INCORPORATED, a California Corporation;
and DOES 1-50, inclusive,

DEFENDANTS.

1. Failure to Pay Minimum Wages for All Hours Worked (Labor Code §§ 1194, 1194.2, 226.2, 1197)
2. Failure to Reimburse Work-related Expenses (Labor Code § 2802)
3. Failure to Provide Complete/Accurate Wage Statements (Labor Code §§ 226-226.3, 1174(d))
4. Waiting Time Penalties (Labor Code §§ 201-204 and 210)
5. UCL Violations (Bus. & Prof. Code §§ 17200 et seq.);
6. PAGA Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff ADRIAN VALLE PADILLA, an individual, on behalf of herself, all others similarly
2 situated, the State of California as a private attorney general, and all other aggrieved employees, complains
3 of Defendant COPPELL TRANSPORT, INC., a Texas Corporation, OTD LOGISTICS,
4 INCORPORATED, a California Corporation, and DOES 1-50 (collectively “Defendants” or “Defendant”)
5 and each of them, and alleges upon information and belief, as follows:
6

7
8 **I. THE PARTIES**

9 1. Plaintiff ADRIAN VALLE PADILLA is a former employee of Defendants who worked
10 for Defendants from approximately May 2017 to March 2019.

11 2. Plaintiff and the other Class members and Aggrieved Employees at all times pertinent
12 hereto, have been classified as employees by Defendants, and have been hired by Defendants to work in
13 in California.
14

15 3. Defendant COPPELL TRANSPORT, INC. is a Texas corporation, with a principal place
16 of business of in Irving, Texas.

17 4. Defendant OTD LOGISTICS, INCORPORATED is a California corporation, with a
18 principal place of business in San Diego, California.

19 5. The true names and capacities, whether individual, corporate, associate, or otherwise, of
20 Defendants sued herein as DOES 1-50, inclusive, are currently unknown to Plaintiff, who therefore sues
21 Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and
22 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
23 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to
24 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as
25 DOES when such identities become known.
26

27 6. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
28 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
29 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the
30 other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of
31 Plaintiff and the other Class members and Aggrieved Employees.
32

33 7. At all relevant times, Defendants employed Plaintiff and the other Class members and

Aggrieved Employees within California and in San Bernardino County and have done business throughout the State of California and in San Bernardino County.

8. Plaintiff brings this action on behalf of herself and all others similarly situated, as a class action pursuant to California Code of Civil Procedure § 382 and as a Private Attorney General Act (“PAGA”) action pursuant to Labor Code § 2699, *et seq.*

9. Plaintiff seeks to represent a “Class” defined as: *all current and former California-based hourly or non-exempt truck driver employees during the period from July 16, 2016 through the date of Class Certification* (the “Class Period”).¹

10. Plaintiff further seeks to represent a group of PAGA “Aggrieved Employees” defined as: *all current and former California-based hourly or non-exempt truck driver employees during the period from April 14, 2019 through the present* (the “PAGA Period”).²

II. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

12. This Court has personal jurisdiction over Defendants because Defendants caused injuries in the County of San Bernardino and State of California, through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code sections 17200, *et seq.*

13. Venue as is proper in this judicial district pursuant to Code of Civil Procedure § 395. Defendants operate within California and do business within San Bernardino County. The unlawful acts alleged herein have a direct effect on Plaintiff and the other Class members and Aggrieved Employees within the State of California and the County of San Bernardino.

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¹ Plaintiff and Defendant have entered into a Tolling Agreement extending the statute of limitations for the claims alleged herein.
² All references herein to the “Class” or “Class members” are inclusive of all Aggrieved Employees.

1 **III. CLASS ALLEGATIONS**

2 14. Each of the Causes of Action alleged herein are appropriately suited for a class action
3 pursuant to § 382 of the Code of Civil Procedure because the following requirements are met:

4 **Numerosity**

5 15. The members of the Class are sufficiently numerous to render the joinder of all their
6 members impracticable. Plaintiffs are informed and believe that there are no less than **50** Class members.
7 Although the exact number is currently unknown to Plaintiff, this information is readily ascertainable from
8 Defendants' time and payroll records and other personnel records.
9

10 **Commonality and Predominance**

11 16. Common questions of law and fact exist as to all members of the Class and predominate
12 over any questions solely affecting individual members of the Class. Among the questions of law and fact
13 common to the Plaintiffs and the Class are the following:
14

- 15 a. Whether Defendants failed to pay Class members minimum wages for all hours
16 worked;
17 b. Whether Defendants failed to pay Class members all wages due on a timely basis;
18 c. Whether defendants failed to provide provided Class members with accurate itemized
19 uniform wage statement in accordance with Labor Code § 226;
20 d. Whether Defendants failed to reimburse Class members for their work-related
21 expenses.
22 e. Whether Defendants engaged in unlawful business practices with respect to all Class
23 members;
24 f. Whether Defendants deprived Class members of wages that Defendants knew were due
25 and owing, yet failed to pay at the time of termination and/or within 72 hours of
26 resignation for those former employees who did not provide advance notice.
27

28 17. The nature and extent of class-wide injury and the measure of damages for the injury.
29

30 **Typicality**

31 18. Plaintiffs' claims are typical of the claims of the members of the Class because, like all
32 other Class members, Plaintiff was employed by Defendants in California in the same position as Class
33 members and suffered damages and violations of rights as a result of Defendants' common uniform and

1 systemic policies and practices as alleged herein. Defendants subjected all Class members to those same
2 common policies and practices. Class members' claims arise out of the same common course of conduct
3 by Defendants and are based on the same legal and remedial theories involving uniform employment
4 policies and practices applicable to all Class members, including Plaintiff. Plaintiff and all other Class
5 members sustained injuries and damages as a result of Defendants' illegal policies, practices and/or
6 common course of conduct in violation of California wage and hour laws and/or illegal, unfair, or
7 fraudulent business practices.

8
9 **Adequacy of Representation**

10 19. Plaintiff will fairly and adequately represent the interests of each Class member. Plaintiff
11 has retained competent and experienced counsel with significant experience in complex and class action
12 litigation. Plaintiff and Plaintiff's counsel are committed to prosecuting this action vigorously on behalf
13 of each Class member and have the expertise and financial resources to adequately represent the interests
14 of each Class member. Neither Plaintiff nor Plaintiff's counsel have any conflict of interest with any
15 member of the Classes.
16

17 **Superiority of Class Action**

18 20. A class action is a superior method of litigation for the fair and efficient adjudication of
19 this controversy. Individual joinder of all Class members is not practicable. Class action treatment will
20 allow similarly situated employees to litigate their claims in the manner that is most efficient and
21 economical for the parties and the judicial system.
22

23 21. There is no known difficulty that might be encountered in the management of this suit
24 which would preclude maintenance as a class action.

25 22. Given Defendants' systemic failure to comply with California Labor Code and Wage
26 Orders as described herein, the members of the Class are so numerous that joinder of all members is
27 impractical. Moreover, the disposition of the claims of the Class in a single action will provide substantial
28 benefit to all Parties and the Court.
29

30 23. Prosecution of separate actions by individual members of each Class member creates the
31 risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish
32 incompatible standards of conduct for Defendants.
33

24. Because joinder of all members is impractical, a class action is superior to other available

1 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for
2 many members of the Class, while substantial, may not be sufficient to enable them to maintain separate
3 suits against Defendants.

4 25. **Reservation of Rights:** Pursuant to California Rule of Court 3.765(b), Plaintiff reserves
5 the right to amend or modify the class definitions with greater specificity, by further division into
6 subclasses, and/or limitation to particular issues.
7

8 9 **IV. COMMON ALLEGATIONS**

10 26. During the statutory periods applicable to their claims, Defendants paid Class members on
11 a piece rate compensation basis for their driving (i.e., productive time) and purported to pay hourly
12 compensation for “on-duty” non-productive time as required by California Labor Code § 226.2.
13 Specifically, Defendants paid drivers a piece rate (generally \$150) for each route driven, with an additional
14 piece rate (generally \$20 to \$30) for extra/side stops on the same route. Under this compensation scheme,
15 Defendants paid class members a “fixed rate” per route regardless of how long the route took. This
16 compensation scheme resulted in the underpayment of minimum wages in instances where Class members
17 drove routes where the piece rate was insufficient to meet applicable minimum wage requirement.
18

19 27. Additionally, under Defendants’ uniform compensation policy, Defendants failed to pay
20 Class members an hourly rate of at least minimum wage for “other non-productive” or “non-driving” time
21 separately and in addition to the piece rate. Labor Code § 226.2; *Nisei Farmers League v. California*
22 *Labor & Workforce Dev. Agency*, 2019 Cal. App. LEXIS 10 (Cal. Ct. App. Jan. 4, 2019).
23

24 28. Defendants violated Class members’ right to be paid at least the minimum wage for all
25 hours worked by *inter alia* failing to pay Class members for their time spent waiting after reporting to
26 work (on days when they showed up but when Defendants did not have a route for them to drive that day),
27 and by failing to pay separately and hourly on a daily basis for all waiting and detention time. Under their
28 scheme, Defendants required Class members to report to work and wait for anywhere from an hour to
29 three hours for an assignment. If Defendants determine that there was no work to be done, they sent Class
30 members home, and did not pay them for the time spent waiting at work.
31

32 29. Defendants paid Class members a flat accessorial rate (typically \$25) during trips where
33 they were required to unload a trailer, wait for a trailer to be unloaded, wait for a customer, or spend other

1 time working without driving, regardless of the amount of unloading waiting time. However, this flat rate
2 did not meet applicable minimum wage requirements on trips when waiting time in connection with
3 unloading of trailers exceeded 2 hours.

4 30. Defendants not only failed to pay Class members for non-productive time during the Class
5 Period, but also falsely and deceptively purported manipulated the wage statements and other records they
6 provided to Class members to create the illusion that they separately compensate non-productive time at
7 an hourly rate on the paystub. However, this was merely a farce, as no additional separate and hourly
8 compensation was ever paid. More specifically, the purported “hourly pay” was merely a fabrication
9 determined by first dividing the already *earned piece-rate* compensation by all worked hours, and then
10 applying that hourly rate to both the productive time and non-productive time by *subtracting* non-
11 productive time from productive time. In other words, Defendants fabricated a false hourly rate and
12 purported to apply that rate separately to both productive and non-productive time in order to arrive at
13 total pay for worked time. But that total always and only equaled the piece-rate compensation earned. As
14 such, no additional pay of a *separate* hourly rate for non-productive time was ever paid to employees.
15 Defendants’ timekeeping and payroll records demonstrate that this error was uniform and systemic for all
16 Drivers, and always operated to the detriment of Class members. Defendants’ systematic reduction of non-
17 productive worked time resulted in a failure to record and pay at least minimum wage for all worked time,
18 and subjects them to damages, liquidated damages, and civil penalties under California Labor Code §§
19 1194, 1194.2, 1197, 1197.1 and 2698 *et seq.*

20 31. While Labor Code § 226.2 requires separate payment of at least minimum wage for non-
21 productive time, Defendants purported to pay non-productive time at Class members’ regular rate of pay
22 (as incorrectly calculated) on both wage statements and timekeeping records. Accordingly, Defendants
23 owe Class members separate hourly compensation for non-productive time at their version of a regular
24 rate, rather than the applicable minimum wage, as they represented and promised to Class members.

25 32. Further, Defendants’ failure to separately compensate non-productive time also means they
26 incorrectly calculated the true regular rate used to pay Drivers for meal and rest break time as required by
27 Labor Code § 226.2.

28 33. Defendants’ practice also resulted in an underpayment of the piece rate compensation
29 owed.

1 34. At the end of Class members' shifts, Defendants would require Class members to "clock
2 out" of the time keeping systems *and then* Defendants required to clean the containers they had hauled.
3 Defendants failed to pay Class members for time associated with cleaning their trailers.

4 35. During the Class Period, Defendants also required Class members to use their cell phones
5 for a variety of essential, work-related tasks. For example, dispatch would text drivers their assignments,
6 including location, container, and timing details. Dispatch also regularly requested that drivers use their
7 phones to send pictures of trucks and containers for Defendants' record keeping purposes. Defendants
8 also regularly used drivers' cell phones to communicate with them about scheduling and work
9 assignments. Class members' use of their cell phones was a necessary part of their work. However,
10 Defendants have failed to reimburse Class members for a reasonable portion of their cell phone expenses
11 in violation of Labor Code § 2802.
12

13 36. Defendants also required Class members to purchase their own vests, which they had to
14 wear to enter the work site. These vests cost approximately \$40 each, and Plaintiff purchased 3 during his
15 tenure, or approximately 1 per year. However, Defendants have failed to reimburse Class members for
16 such necessary work expenses in violation of Labor Code § 2802.
17

18 37. The foregoing unlawful policies and practices resulted in both incomplete and inaccurate
19 records of time worked and wages owed. In particular, Defendants' timekeeping records and wage
20 statements, in each pay period and for each Driver, systematically and uniformly incorrectly stated the
21 total hours worked, number of piece rate units earned, applicable piece rates for those units, non-
22 productive hours worked, hourly rate paid for non-productive time, hourly rate paid for break time, and
23 gross and net wages earned.
24

25 38. As described in detail above, Defendants failed to pay Class members whose employment
26 concluded within the applicable time period all wages owed, including but not limited to regular wages
27 and overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at the time of their
28 termination/separation. Thus, as result of Defendant's faulty policies described above, Plaintiff and the
29 other Class members and Aggrieved Employees left their employment with Defendants without being
30 compensated for each and every hour worked at the appropriate rate in violation of Labor Code §§ 201,
31 202, and 203.
32

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FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED
(Labor Code §§ 1194, 1194.2, 226.2, 1197, 1197.1)

39. Plaintiff re-alleges and incorporates by reference each allegation contained in the foregoing paragraphs as though fully set forth herein.

40. Section 1194 of the Labor Code provides, in relevant part:
Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage..., including interest thereon, reasonable attorney's fees, and costs of suit.

41. Section 1194.2 of the Labor Code provides, in relevant part:
In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

42. Labor Code Section 226.2(a) provides that "for employees paid on a piece-rate basis during a pay period, the following shall apply for that pay period: (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation..." The statute goes on to clarify that rest period time must be paid at the higher of: "(i) An average hourly rate determined by dividing the total compensation of the workweek, exclusive of compensation for rest and recovery periods and any premium compensation or overtime, by the total hours worked during the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods." Or "(ii) The applicable minimum wage." See Labor Code 226.2(a)(3). Moreover, all other non-driving time must be compensated separate and hourly at the rate of at least minimum wage. See Labor Code 226.2(a)(4).

43. As set forth above, Plaintiff and the other members of the Class were paid on a flat rate piece rate basis, but Defendants did not separately compensate drivers on an hourly basis for their time spent on various non-driving tasks in violation of Labor Code §§ 1194 & 226.2. *See, Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to Safeway's argument, a piece-rate compensation formula that does not compensate separately for rest periods does not comply with California minimum wage law."); *Cardenas v. McLane Food Services, Inc.* (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252 (piece-rate pay system that did not separately pay truck drivers for rest periods and other non-driving tasks violates California law requiring compensation for each hour worked); *Gonzalez v.*

1 *Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36, 49 (favorably citing and adopting *Cardenas*);
2 and Labor Code § 226.2 (codifying *Bluford* and *Gonzalez*); *Murphy v. Kenneth Cole Productions, Inc.*
3 (2007) 40 Cal. 4th 1094 (holding that under California law, reporting time pay constitutes wages).

4 44. In failing to pay Class members for such time after *Gonzalez* and *Bluford* in 2013, and
5 certainly for any violations after January 1, 2016, when Section 226.2 became effective (codifying existing
6 law), Defendants operated in bad faith given the cases and the state of the law set forth above.

7 45. Accordingly, pursuant to sections 1194, 1194.2, 1197, 1197.1, and 226.2(j) of the
8 California Labor Code, Plaintiff and the Class are entitled to recover, either their unpaid hourly wages
9 due, or minimum wage plus liquidated damages in an additional amount equal to the total amount of wages
10 unlawfully withheld during the Class Period for truck drivers' non-driving time.

11 46. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also entitled to
12 recover liquidated damages, interest, costs, and attorneys' fees associated with this cause of action.

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15 **SECOND CAUSE OF ACTION**
16 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
17 **(Cal. Labor Code § 2802)**

18 47. Plaintiff re-alleges and incorporates by reference each allegation contained in the foregoing
19 paragraphs as though fully set forth herein.

20 48. Labor Code § 2802 provides that "[a]n employer shall indemnify his or her employee for
21 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
22 his or her duties." "Necessary" business expenses is defined to include all "reasonable expenses." *See*
23 Labor Code § 2802(c).

24 49. California law prohibits an employer from failing to reimburse employees from losses
25 incurred through the use of their own electronic devices even if the use would not cause the employee to
26 exceed their data limit. *See Cochran v. Schwan 's Home Serv., Inc.*, 228 Cal. App. 4th 113 (2014) ("We
27 hold that when employees must use their personal cell phones for work-related calls, Labor Code section
28 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with
29 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell
30 phone bills.").

31 50. Defendant's above-described conduct in requiring Class members to engage in, without
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1 limitation, work-related cell phone use and the purchase of work-related items, caused them to incur losses
2 as a direct consequence of their duties.

3 51. Accordingly, Defendants violated Labor Code §§ 1194, 1197, and 2802.

4 52. Class members are entitled to reimbursement for these reasonably incurred business-
5 related expenditures, plus interest and attorneys' fees and costs, under Labor Code § 2802(a) and (c). The
6 statute of limitations on this claim is 3 years.
7

8 53. As a result of Defendants' violations of Labor Code § 2802, they are also liable for
9 attorneys' fees and costs under Labor Code § 2802(c).

10 **THIRD CAUSE OF ACTION**
11 **INACCURATE WAGE STATEMENTS**
12 **(Cal. Labor Code §§ 226-226.3)**

13 54. Plaintiff re-alleges and incorporates by reference each allegation contained in the foregoing
14 paragraphs as though fully set forth herein.

15 55. Labor Code § 226 obligates employers, semi-monthly or at the time of each payment, to
16 furnish an itemized wage statement in writing showing:

17 (1) gross wages earned;

18 (2) total hours worked by the employee;

19 (3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece rate;

21 (4) all deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item;

23 (5) net wages earned;

24 (6) the inclusive dates of the period for which the employee is paid;

25 (7) the name of the employee and only the last four digits of his or her social security number or
26 an employee identification number other than a social security number;

27 (8) the name and address of the legal entity that is the employer...;

28 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
29 hours worked at each hourly rate by the employee...
30

31 56. Labor Code § 226(e) provides:
32
33

1 (1) An employee suffering injury as a result of a knowing and intentional failure by an employer
2 to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars
3 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
4 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
5 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

6
7 (2) (A) An employee is deemed to suffer injury for purposes of this subdivision if the employer
8 fails to provide a wage statement.

9 (B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails
10 to provide accurate and complete information as required by any one or more of items (1) to (9),
11 inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the
12 wage statement alone one or more of the following:

13
14 (i) The amount of the gross wages or net wages paid to the employee during the pay period
15 or any of the other information required to be provided on the itemized wage statement
16 pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

17 (ii) Which deductions the employer made from gross wages to determine the net wages
18 paid to the employee during the pay period. Nothing in this subdivision alters the ability of
19 the employer to aggregate deductions consistent with the requirements of item (4) of
20 subdivision (a).

21 (iii) The name and address of the employer and, if the employer is a farm labor contractor,
22 as defined in subdivision (b) of Section 1682, the name and address of the legal entity that
23 secured the services of the employer during the pay period.

24 (iv) The name of the employee and only the last four digits of his or her social security
25 number or an employee identification number other than a social security number.

26
27
28 57. By virtue of the acts and omissions described herein, Defendants failed to provide Class
29 members with itemized wage statements identifying, without limitation, the total hours worked, number
30 of piece rate units earned, applicable piece rates for those units, non-productive hours worked, hourly rate
31 paid for non-productive time, hourly rate paid for break time, and gross and net wages earned.in violation
32 of Labor Code § 226(a).

33 58. Moreover, Plaintiff and the other Class members and Aggrieved Employees also suffered

1 legal “injury” for purposes of Labor Code § 226(e) insofar as they were unable to readily and easily
2 determine from the wage statements themselves the information required to be set forth by Section 226(a),
3 and the information provided by Defendants was confusing and inaccurate.

4 59. In addition, Plaintiff and the other Class members and Aggrieved Employees were unable
5 to determine at all the total hours worked by the employee, the gross wages earned, the net wages earned,
6 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
7 worked at each hourly rate by the employee for the reasons discussed above.

8 60. Defendant’s failure to provide complete and accurate wage statements was willful.

9 61. Pursuant to Labor Code § 226(e), Plaintiffs and the Class members are entitled to recover
10 the greater of actual damages or civil penalties pursuant to that provision, as well as interest, reasonable
11 attorney fees and costs, in amounts to be proven at trial.

12
13
14 **FOURTH CAUSE OF ACTION**
15 **WAITING TIME PENALTIES**
16 **(Cal. Labor Code §§ 201-204, 210)**

17 62. Plaintiff re-alleges and incorporates by reference each allegation contained in the foregoing
18 paragraphs as though fully set forth herein.

19 63. Under Labor Code §§ 201-202, an employer must provide an employee wages at the time
20 or discharge or within up to seventy-two (72) hours of their resignation. Labor Code § 203 provides “if an
21 employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages
22 of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*,
23 (1998) 68 Cal.App.4th 487, 492.

24 64. As described in detail above, Defendants failed to pay Plaintiff and other Class members
25 whose employment concluded during the relevant time periods all wages owed, including but not limited
26 to regular wages and overtime wages within the time constraints proscribed in Labor Code §§ 201-202 at
27 the time of their termination/separation. Thus, as result of Defendant’s faulty policies described above,
28 Plaintiff and the other Class members and Aggrieved Employees left their employment with Defendants
29 without being compensated for each and every hour worked at the appropriate rate in violation of Labor
30 Code §§ 201, 202, and 203.

31 65. Labor Code § 204 expressly requires that “[a]ll wages ... earned by any person in any
32
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1 employment are due and payable twice during each calendar month, on days designated in advance by the
2 employer as the regular paydays.”

3 66. Due to Defendant’s failure to pay Plaintiff and the other Class members and Aggrieved
4 Employees all wages due (including the underpayment of regular wages), Defendants failed to timely pay
5 them all wages owed within seven (7) days of the close of the payroll period in accordance with Labor
6 Code § 204(d) on a regular and consistent basis.

7
8 67. Labor Code § 210 provides that “in addition to, an entirely independent and apart from,
9 any other penalty provided in this article, every person who fails to pay the wages of each employee as
10 provided in Sections ... 204 ... shall be subject to a civil penalty as follows: (1) For any initial violation,
11 one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or
12 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus
13 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices
14 described in detail above and Defendants’ failure to pay all wages due within seven (7) days of the close
15 of the payroll period, the State of California is entitled to recover penalties under Labor Code § 210
16 through PAGA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008) (affirming an
17 award of Labor Code section 210 penalties under PAGA due to the employer’s failure to timely pay wages
18 at the proper rate in accordance with a local wage ordinance).

19
20 68. Defendant’s failure to pay wages, as alleged above was willful in that Defendants knew
21 wages to be due but failed to pay them and the sums of these wages were certain and not reasonably
22 subject to dispute. Thus, Plaintiff and the other Class members and Aggrieved Employees left their
23 employment with Defendants are entitled to penalties under Labor Code § 203, which provides that an
24 employee’s wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time
25 they were due.

26
27 69. To date, Class members have not yet received all wages due and payable, including but not
28 limited to, minimum wages, and regular wages. On information and belief, members of the Class have not
29 yet received all minimum wages, regular wages, and meal and rest premium wages due and owing to
30 them.

31
32 70. As a direct result of Defendants’ violations alleged herein, Plaintiffs and the Class members
33 suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them,

all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

FIFTH CAUSE OF ACTION
UNLAWFUL BUSINESS PRACTICES
(Business & Prof. Code § 17200 *et seq.*)

71. Plaintiff re-alleges and incorporates by reference each allegation contained in the foregoing paragraphs as though fully set forth herein.

72. Plaintiffs bring this action on behalf of herself and the Class for the four-year period preceding filing of this complaint.

73. By and through the acts and omissions alleged herein, Defendants engaged in unlawful, unfair, and/or fraudulent business practices in violation of Business & Profession Code § 17200 *et seq.*

74. Defendants conducted business activities while failing to comply with the legal mandates alleged herein. Plaintiffs and others similarly situated suffered injury in fact and lost money as a result of Defendants' unfair competition.

75. Pursuant to Business & Professions Code 17200 *et seq.*, Plaintiffs are entitled to restitution and other appropriate relief on their own behalf and on behalf of others similarly situated.

SIXTH CAUSE OF ACTION
PAGA PENALTIES
(Labor Code § 2699, *Et Seq.*)

76. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and incorporates by reference all previous paragraphs.

77. Based on the above allegations incorporated by reference, Defendants violated, without limitation, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.2, 226.3, 1174, 1174.5, 1194, 1197, 1197.1, and 2802.

78. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

\$100 for the initial violation per employee per pay period; and

\$200 for each subsequent violation per employee per pay period.

79. These penalties will be allocated 75% to the Labor Workforce Development Agency and

1 25% to the affected employees.

2 80. In addition, as set forth above, Defendants failed to provide Plaintiff and the other
3 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code § 226(a).
4 Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be
5 subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in
6 an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
7 citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep
8 the required in subdivision (a) of Section 226.”

9
10 81. Further, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that
11 Defendant’s conduct in refusing to provide accurate and itemized wage statements was knowing,
12 intentional, or willful. *Lopez v. Friant & Assocs., LLC*, (2017) 15 Cal. App. 5th 773, 788, (“Consistent
13 with the PAGA statutory framework and the plain language and legislative history of section 226(e), we
14 hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to
15 satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1).”); *see Willner v.*
16 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all
17 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”);
18 *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes
19 of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish
20 a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal.
21 July 3, 2013) (“Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties
22 under § 2699(f) of PAGA.”).³

23
24 82. As a result of the acts alleged above, Plaintiff and the other Class members and Aggrieved
25 Employees seek penalties under Labor Code § 2699, et seq.

26
27
28 ³ See also *York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1, 2012) (granting
29 summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code § 226(a) because “the presence
30 or absence of injury is irrelevant to the standing inquiry under PAGA.”) *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal.,
31 May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268 (“[T]he Court rejects CPS’s argument that plaintiff ‘lacks any PAGA
32 injury.’ Pursuant to Cal. Labor Code § 2699, ‘any provision of this code that provides for a civil penalty to be assessed and
33 collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of herself or herself and other current or former employees.’ Sections 2699.5 and
2699.3(a) provide that such a claim may be brought for a violation of § 226(a)”); *accord Lopez v. G.A.T. Airline Ground
Support, Inc.* (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-6 (“It is undisputed that GAT’s paychecks
do not indicate the applicable hourly rate of pay for the employee’s regular rate, overtime rate, or double-time rate of pay... The
failure to provide this information violates Section 226(a)... Because Section 226 does not provide a penalty, Section 2699(f)
penalties are available.”).

83. Pursuant to Labor Code § 2699.3 (a), on **April 14, 2020**, Plaintiff gave written notice by certified mail to Defendant, and to the Labor and Workforce Development Agency (“LWDA”) of her claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the pursuit of her PAGA claim on behalf of herself and all other current and former Aggrieved Employees of Defendants.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

- a. For general damages, including, without limitation, unpaid wages and premiums;
- b. For special damages;
- c. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
- d. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted by law;
- e. or statutory penalties to the extent permitted by law, including those pursuant to the Labor Code §§ 201-203 and 226, and the Orders of the Industrial Welfare Commission, among others;
- f. For restitution as provided by Business and Professions Code § 17200, *et seq.*;
- g. For an order requiring Defendants to restore and disgorge all funds to each affected person acquired by means of any act or practice declared by this Court to be unlawful, unfair, or fraudulent and, therefore, constituting unfair competition under Business and Professions Code § 17200, *et seq.*;
- h. For an award of damages in the amount of unpaid compensation and monies including, but not limited to actual damages, unpaid wages, minimum wages, regular wages, overtime wages, waiting time penalties and other penalties according to proof, including interest thereon, to the extent permissible by law;
- i. For an award of the greater of actual damages or the liquidated damage amounts provided by Labor Code § 226(e) for Defendant’s failure to provide accurate itemized wage statements, pursuant to Labor Code § 226(a);
- j. For indemnification of all losses incurred as a result of employment with Defendant, with interest;
- k. For pre- and post-judgement interest to the extent permitted by law including, but not limited to, Labor Code §§ 218.6 and 1194;

- 1 l. For an order imposing a constructive trust upon Defendants to compel it to transfer wages that
2 have been wrongfully obtained and held by Defendants to unpaid employees;
3 m. For an accounting to determine all money wrongfully obtained and held by Defendants;
4 n. For a declaratory judgment that Defendants violated each provision of the Labor Code and Wage
5 Order of the Industrial Welfare Commission alleged herein;
6 o. An award of penalties and other relief allowable under Labor Code § 2699, *et seq.*, including a
7 civil penalty in the amount of \$100 for the initial violation and \$200 for each subsequent violation
8 as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and for the Aggrieved
9 Employees during all of the pay periods in the PAGA Period;
10 p. Such other and further relief as this Court may deem proper and just.
11

12
13 Respectfully submitted,

14 ACKERMANN & TILAJEF, P.C.
15 LAW OFFICE OF TATIANA HERNANDEZ, P.C.
16 INDIA LIN BODIEN, ATTORNEY AT LAW

17 DATED: December 31, 2020

18 By:



19 Sam Vahedi

20 Craig Ackermann

21 Tatiana Hernandez

22 India Bodien

23 *Attorneys for Plaintiff and others similarly situated*
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