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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THOMAS HARDWICK, and on behalf of the
general public as private attorneys general,

Plaintiffs,

v.

HOOVESTOL, INC., a Minnesota; and DOES
1-10, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

COMES NOW Plaintiff THOMAS HARDWICK (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserting claims against Defendants HOOVESTOL, INC.; and DOES 1-10, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices resulting from Defendants (a) failure to pay all wages owed; (b) failure to provide a lawful meal period for shifts worked in excess of five hours, failure to provide a second meal period for shifts worked in excess of ten hours, and failure to pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay in lieu of providing a rest period; (d) failure to reimburse for all necessary business expenses incurred; (e) failure to pay all wages earned and owed upon separation from Defendants’ employ; and (f) failure to provide accurate itemized wage statements. As a result of these unpaid wages enumerated under Labor Code §2699.5, Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which

1 this action is brought do not give jurisdiction to any other court.

2 4. This Court has jurisdiction over Defendants because, upon information and belief,
3 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
4 avails itself of the California market so as to render the exercise of jurisdiction over it by the
5 California Courts consistent with traditional notions of fair play and substantial justice.

6 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
7 Civil Procedure section 395. Defendants are doing business throughout California, including but
8 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
9 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
10 all other aggrieved employees within the state of California. Defendants employ numerous
11 aggrieved employees in in the state of California.

12 6. On information and belief, Defendants have conducted business within the state of
13 California during the purported liability period and continue to conduct business throughout the
14 state of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
15 similarly situated non-exempt aggrieved employees within California.

16 7. The California Superior Court also has jurisdiction in this matter because on
17 information and belief there are no federal questions at issue, as the issues herein are based solely
18 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
19 California Code of Civil Procedure, and the California Civil Code.

20 8. On information and belief, during the statutory liability period and continuing to
21 the present ("liability period"), Defendants consistently maintained and enforced against Plaintiff
22 and aggrieved employees the following unlawful practices and policies, in violation of California
23 state wage and hour laws: (a) failure to pay all wages owed, (b) failure to provide a lawful meal
24 period for shifts worked in excess of five hours, failure to provide a second meal period for shifts
25 worked in excess of ten hours, and failure to pay an additional hour's of pay in lieu of providing a
26 meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked
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1 and failure to pay an additional hour's of pay in lieu of providing a rest period; (d) failure to
2 reimburse for all necessary business expenses incurred; (e) failure to pay all wages earned and
3 owed upon separation from Defendants' employ; and (f) failure to provide accurate itemized wage
4 statements.

5 9. Plaintiff on behalf of the general public and all other aggrieved employees brings
6 this action pursuant to Labor Code 2698 *et seq.* for violations enumerated under 2699.5 as follows:
7 sections 201-203, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,1194.2,
8 1197,1197.1, 1198, 2699, 2800 and 2802, seeking penalties, interest, attorneys' fees and costs.

9 **III. PARTIES**

10 17. Plaintiff was at all times relevant to this action a resident of California. Plaintiff
11 was employed by Defendants from approximately late November, 2011 to March, 2020, as a non-
12 exempt employee in the state of California.

13 18. Defendants HOOVESTOL, INC. is a trucking company contracted with the United
14 States Postal Service to haul and deliver mail nationwide, with operations throughout the state of
15 California, including Los Angeles county. Plaintiff estimates there are in excess of 100 aggrieved
16 employees who work or have worked for Defendants over the last year.

17 19. Other than identified herein, Plaintiff is unaware of the true names, capacities,
18 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
19 DOES 1 through 10, but is informed and believes and thereon alleges that said defendants are
20 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
21 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
22 are ascertained.

23 20. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
24 or indirectly, or through agents or other persons, employed Plaintiff and aggrieved employees, and
25 exercised control over their wages, hours, and working conditions. Plaintiff is informed and
26 believes and thereon alleges that each defendant acted in all respects pertinent to this action as the
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agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

IV. GENERAL ALLEGATIONS

21. At all times set forth herein, Defendants employed Plaintiff and aggrieved employees, however titled, as non-exempt hourly employees.

22. Plaintiff is informed and believes that all aggrieved employees are citizens of the state of California.

23. Upon information and belief, Defendants continue to employ aggrieved employees, however titled, in California and implement a uniform set of policies and practices, as they were all engaged in the generic job duties of transporting mail.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

25. Upon information and belief, Defendant did not properly compensate Plaintiff and aggrieved employees for all hours worked in violation of California law. This is due, in part, to Defendant requiring Plaintiff and aggrieved employees to frequently work off the clock while under Defendant's control. For instance, upon information and belief, Defendant maintained a policy and practice of requiring its drivers to stay with their trucks at all times of the day because, according to Defendant, the drivers are responsible for the safety of the truck, trailer and cargo/mail they are transporting. However, Defendant failed to compensate drivers for this time, even though the drivers were under Defendant's control. Moreover, many times drivers would deliver a load at the end of the day and would have to wait until the following morning to pick up their next load. Drivers were expected to stay with the truck at all times (and sleep in the truck) until picking up their next load the following morning. Drivers were also required to inspect the truck they were assigned to drive to make sure it was safe to drive prior to clocking in for a shift. Similarly, after clocking out, drivers were expected to inspect the truck for any damages or issues. Defendant

1 failed to compensate Plaintiff and aggrieved employees for the time spent performing these
2 required job duties.

3 26. This failure to pay for all time worked also included the failure to pay for time
4 rounded to Defendant's advantage. Plaintiff is informed and believes, and thereon alleges, that
5 Defendant knew or should have known that Plaintiff and aggrieved employees were entitled to
6 receive wages for all hours worked, including overtime compensation. In violation of the Labor
7 Code and IWC Wage Orders, Plaintiff and aggrieved employees were not properly paid for all of
8 their time worked because Defendant rounded Plaintiff's and aggrieved employees' time punches
9 to Defendant's advantage.

10 27. Not surprisingly, due to Defendant's policy and practice of requiring drivers to
11 stay with their trucks at all times as well as Defendant's rigorous driving and delivery schedules,
12 Plaintiff and aggrieved employees were not provided with a duty-free meal period or rest break.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and aggrieved employees were entitled to receive all meal
15 periods or payment of one additional hour of pay at Plaintiff's and aggrieved employees' regular
16 rate of pay when they did not receive one timely, uninterrupted meal period when working more
17 than five hours and a second timely, uninterrupted meal period when working more than ten
18 hours. Defendants failed to provide these lawful meal periods to Plaintiff and aggrieved
19 employees. As a result, Plaintiff and aggrieved employees were not paid all wages owed
20 (including overtime wages). Plaintiff is informed and believes, and thereon alleges, that
21 Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to
22 receive all wages owed yet failed to do so.

23 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and aggrieved employees were entitled to receive all rest breaks
25 or payment of one additional hour of pay at Plaintiff and class members' regular rate of pay
26 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
27 and aggrieved employees did not receive all rest breaks or payment of one additional hour of pay
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1 at Plaintiff and aggrieved employees' regular rate of pay when a rest break was missed. As a
2 result, Plaintiff and aggrieved employees were not paid all wages owed (including overtime
3 wages). Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
4 have known that Plaintiff and aggrieved employees were entitled to receive all wages owed yet
5 failed to do so.

6 30. In addition, Plaintiff and the aggrieved employees were not allowed to leave their
7 trucks during meal periods and rest breaks.

8 31. Despite the above-mentioned meal period and rest break violations, Defendants
9 did not compensate Plaintiff, and on information and belief, did not compensate aggrieved
10 employees one additional hour of pay at their regular rate as required by California law,
11 including Labor Code section 226.7 and the applicable IWC wage order, for each day on which
12 lawful meal periods and rest breaks were not authorized and permitted. As a result, Plaintiff and
13 aggrieved employees were not paid all wages owed (including overtime wages). Plaintiff is
14 informed and believes, and thereon alleges, that Defendants knew or should have known that
15 Plaintiff and aggrieved employees were entitled to receive all wages owed yet failed to do so.

16 32. Upon information and belief, Defendants also failed to keep accurate records
17 pursuant to Labor Code § 1174.5.

18 33. In addition to the violations above, and on information and belief, Defendants
19 knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations
20 asserted herein, and that Defendants had the financial ability to pay such compensation, but
21 willfully, knowingly, recklessly, and/or intentionally failed to do so.

22 **V. REPRESENTATIVE CLAIMS**

23 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

24 17. Plaintiff incorporates by reference and re-alleges each and every allegation
25 contained above, as though fully set forth herein.

26 18. On May 18, 2020, Plaintiff complied with notice requirements pursuant to Labor
27 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
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1 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
2 the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
3 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
4 representative capacity. Plaintiff also sent a copy of this complaint to the LWDA.

5 19. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
6 Plaintiff brings this cause of action on behalf of all current and former California employees of
7 Defendants.

8 20. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties
9 and unpaid wages for which Defendants are liable due to numerous Labor Code violations as set
10 forth in this Complaint, including without limitation Labor Code sections 201-203, 226, 226.3,
11 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699, 2800 and
12 2802 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section
13 11000 *et. seq.*

14 21. Defendants' conduct violates numerous Labor Code sections including, but not
15 limited to, the following:

- 16 a. Violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198
17 for unpaid wages as herein alleged;
- 18 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
19 Plaintiff and other aggrieved employees and failure to pay premium wages for
20 missed meal periods as herein alleged;
- 21 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
22 other aggrieved employees and failure to pay premium wages for missed rest
23 periods as herein alleged; and
- 24 d. Violation of Labor Code §§ 201-203 for failure to timely pay all earned wages owed
25 to Plaintiff and other aggrieved employees upon separation of employment as
26 herein alleged;
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1 e. Violation of Labor Code § 226, 1174 and 1174.5 for failure to provide accurate
2 itemized wage statements and/or maintain accurate records to Plaintiff and other
3 aggrieved employees as herein alleged.

4 22. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
7 period in which Defendants violated the Labor Code.

8 23. Further, Labor Code § 558(a) provides “any employer or other person acting on
9 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
11 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
12 pay period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
16 be paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties provided for
17 in this section are in addition to any other civil or criminal penalty provided by law.”

18 24. Defendants’ conduct, as alleged herein, has been and continues to be unfair,
19 unlawful and harmful to Plaintiff and the general public. Plaintiff seeks to enforce important rights
20 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

21 25. Plaintiff and aggrieved employees are entitled to recover penalties and attorneys’
22 fees and costs under Labor Code section 2698, *et seq.*

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24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

26 1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;

27 2. For reasonable attorneys’ fees and costs to the extent permitted by law, including
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1 pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and

2 3. For such other and further relief as the Court deems proper.

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4 Dated: May 21, 2020

JAMES R. HAWKINS, APLC

5
6 *Samantha Smith*

7 James R. Hawkins, Esq.

Samantha A. Smith, Esq.

8 Attorneys for Plaintiff and the general public
9 as private attorneys general