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the general public as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

JOSE VERDUZCO CAMPOS, on behalf of the
general public as private attorney general,

Plaintiff,

v.

CREAM OF THE CROP AG SERVICE, INC.,
a California Corporation; TRILOGY
PERSONNEL & LAND MANAGEMENT,
INC., a California Corporation; and DOES 1-
50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

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

COMES NOW JOSE VERDUZCO CAMPOS (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants CREAM OF THE CROP AG SERVICE, INC., a California Corporation; TRILOGY PERSONNEL & LAND MANAGEMENT, INC., a California Corporation; and DOES 1-50, inclusive, and DOES 1-50, 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 which led to unpaid wages resulting from Defendant’s: (a) failing to provide accurate itemized wage statements, (b) failing to pay all wages earned and owed upon separation from Defendant’s employ, and (c) failure to reimburse necessary business expenses. As a result, 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 this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the

1 California Courts consistent with traditional notions of fair play and substantial justice.

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

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

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

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendant consistently maintained and enforced against
19 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
20 and policies, in violation of California state wage and hour laws: (a) failing to provide accurate
21 itemized wage statements, (b) failing to pay all wages earned and owed upon separation from
22 Defendant's employ, and (c) failure to reimburse necessary business expenses.

23 9. On information and belief, during the statutory liability period and continuing to
24 the present, Defendants have had a consistent policy of failing to timely pay wages upon
25 separation.

26 10. On information and belief, during the statutory liability period and continuing to
27 the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized
28

1 wage statements.

2 11. On information and belief, during the statutory liability period and continuing to
3 the present, Defendants have failed to reimburse necessary business expenses to Plaintiff and
4 aggrieved employees.

5 12. Plaintiff on behalf of the general public as private attorney general and all other
6 aggrieved employees bring this action pursuant to Labor Code 2698, *et. seq.* for violations
7 enumerated under 2699.5 as follows: sections 201-203, 226, 266.3, 1174, 1174.5, 1175, 1194,
8 1197, 1197.1, 1198, and 2802 seeking penalties, interest, attorneys' fees and costs.

9 **III. PARTIES**

10 **A. Plaintiff**

11 13. Plaintiff, JOSE VERDUZCO CAMPOS, was at all times relevant to this action, a
12 resident of Avenal, California. Plaintiff was employed by Defendants in approximately June 2015
13 as a Non-Exempt Employee working as a Field Hand during the liability period until his separation
14 from Defendants' employ in approximately March 2020.

15 14. As Defendants' employee, Plaintiff, and all other aggrieved employees were
16 regularly required to and subsequently suffered:

- 17 a) not provided accurate itemized wage statements; and
18 b) not reimbursed for necessary business expenses incurred.
19 c) On information and belief, Defendants failed to pay all compensation due for failure to
20 reimburse expenses. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf
21 of the general public as private attorney general and all other aggrieved employees.
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23 **B. Defendants**

24 15. Defendants CREAM OF THE CROP AG SERVICE, INC., and TRILOGY
25 PERSONNEL & LAND MANAGEMENT, INC., operates as an agriculture company and
26 provides agriculture support and staffing for various agricultural operations throughout California.
27 Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked
28 for Defendants over the last year.

16. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

17. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group , and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the 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

18. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

19. Plaintiff are informed and believe Aggrieved Employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

20. Plaintiff is informed and believe that all Aggrieved Employees are citizens of the state of California.

21. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, as they were all engaged in the generic job duties of providing agricultural support to various agricultural operations throughout California, such as farm management, the harvesting and hauling of nuts, fruits, vegetables, as well as agricultural equipment installation and repairs.

22. Plaintiff is informed and believe, and thereon alleges, that Defendants are and were

1 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
2 the requirements of California's wage and employment laws.

3 23. During the relevant time period, Defendants failed to provide accurate, lawful
4 itemized wage statements to Plaintiff and the Aggrieved Employees. Upon information and belief,
5 Defendants omitted an accurate itemization of total hours worked, including expense
6 reimbursement totals from Plaintiff and the Aggrieved Employees' wage statements.

7 24. Plaintiff are informed and believe, and thereon alleges, that at all times herein
8 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
9 thereof for resignations without prior notice as the case may be) they had a duty to accurately
10 compensate Plaintiff and Aggrieved Employees for all wages owed for expense reimbursements
11 and that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
12 recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

13 25. On information and belief, Defendants also failed to reimburse Plaintiff and
14 Aggrieved Employees for necessary business expenses incurred as a result of the use of their
15 personal vehicle to travel to various ranches pursuant to Labor Code section 2802.

16 26. Upon information and belief, Defendants knew and or should have known that it is
17 improper to implement policies and commit unlawful acts such as:

- 18 (a) failing to provide accurate itemized wage statements;
- 19 (b) failing to timely pay Plaintiff and Aggrieved Employees;
- 20 (c) failing to reimburse expenses; and
- 21 (d) conducting and engaging in unfair business practices.

22 27. In addition to the violations above, and on information and belief, Defendants knew
23 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
24 herein and that Defendants had the financial ability to pay such compensation, but willfully,
25 knowingly, recklessly, and/or intentionally failed to do so.
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1 V. REPRESENTATIVE CLAIMS

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

3 28. Plaintiff incorporates by reference and re-alleges each and every allegation
4 contained above, as though fully set forth herein.

5 29. On July 14, 2020 Plaintiff complied with notice requirements pursuant to Labor
6 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
7 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
8 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
9 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
10 representative capacity. The substance and violations set forth in this Complaint of which the
11 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
12 Action Complaint to the LWDA.

13 30. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
14 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
15 Employees of Defendants.

16 31. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
17 and unpaid wages for which Defendants are liable due to numerous Labor Code violations as set
18 forth in this Complaint, including without limitation Labor Code section 201-203, 226, 266.3,
19 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and 2698 et seq., applicable IWC Wage
20 Orders and California Code of Regulations, Title 8, section 11000 et. seq.

21 32. Defendants also willfully violated Labor Code sections 201-203 by failing to
22 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
23 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
24 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
25 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
26 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
27 The penalty cannot exceed 30 days of wages.
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1 33. Plaintiff and all other aggrieved employees who were separated from employment
2 are entitled to compensation for all forms of wages, including but not limited to reimbursement for
3 business expenses incurred, therefore entitling them to penalties under PAGA for violations of
4 Labor Code sections 201-203.

5 34. On information and belief, Defendants failed to provide accurate itemized wage
6 statements which failed have failed to accurately record and/or state all time worked on wage
7 statements issued to Plaintiff and Aggrieved Employees and failed to include expense
8 reimbursements on wage statements issued to Plaintiff and Aggrieved Employees pursuant to
9 Labor Code section 226(a).

10 35. Additionally, Defendants have no accurate records relating to aggrieved
11 employees' work periods, total daily hours worked, total hours worked per payroll period and
12 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate
13 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

14 36. Lastly, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all
15 business expenses incurred as discussed above pursuant to Labor Code § 2802.

16 37. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
17 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
18 worked.

19 38. Plaintiff and the Representative Aggrieved Employees are entitled to recover
20 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

21
22 **PRAYER FOR RELIEF**

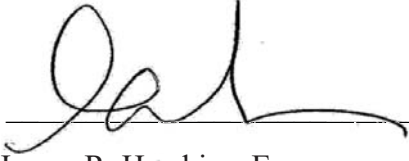
23 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 24 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 25 2. For reasonable attorneys' fees and costs; and
- 26 3. For such other and further relief as the Court deems proper.

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1 Dated: July 14, 2020

JAMES R. HAWKINS, APLC

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4 James R. Hawkins, Esq.

5 Gregory E. Mauro, Esq.

6 Michael Calvo, Esq.

7 Attorneys for Plaintiff, and the general public
8 as private attorneys general

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EXHIBIT A