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Attorneys for Plaintiff Roberto Gonzalez Sanchez, on behalf
of all other similarly situated aggrieved employees

[Additional Counsel Listed on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ROBERTO GONZALEZ SANCHEZ, on
behalf of all other similarly situated
aggrieved employees,

PLAINTIFF,

v.

OAKLEY, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

YESSICA TRUJILLO, on behalf of all other
similarly situated aggrieved employees

Plaintiffs,

v.

)
) **CASE NO. 30-2020-01139833-CU-OE-CXC** [lead
) case]
) **Completely Consolidated with Case No. 30-2020-**
) **01150691-CU-OE-CXC**
)
) **[Case Assigned for All Purposes to Judge William**
) **Claster in Dept. CX-104]**
)
) **SECOND AMENDED COMPLAINT FOR CIVIL**
) **PENALTIES UNDER THE LABOR CODE**
) **PRIVATE ATTORNEYS GENERAL ACT**
) **(“PAGA”) [Labor Code §§2698, et seq.] for:**
)
) **1. Failure to Pay Minimum Wages and/or**
) **Overtime Under Labor Code §§ 510, 1194, and**
) **1199;**
) **2. Derivative Failure to Timely Furnish Accurate**
) **Itemized Wage Statements; and**
) **3. Derivative Violations of Labor Code §203.**
)

OAKLEY, INC., a Washington corporation;
and DOES 1 through 100, Inclusive

Defendants

Complaint Filed: March 23, 2020

First Amended Complaint Filed: May 27, 2020

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Attorneys for Plaintiffs
Yessica Trujillo, on behalf
of all other similarly situated aggrieved
employees

Plaintiffs Roberto Gonzalez Sanchez and Yessica Trujillo, on behalf the State of California and all other similarly situated aggrieved employees (hereinafter collectively referred to as “Plaintiffs”), complain and alleges as follow against Defendants OAKLEY, INC., and DOES 1 to 100 (hereinafter collectively referred to as “Defendants”). Plaintiffs are informed and believe, and on the basis of that information and belief, allege as follows:

I.

INTRODUCTION

1. This is a representative action seeking recovery of civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code (“Labor Code”) §§2698, et seq. PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and other aggrieved current and former employees to recover civil penalties for Defendants’ violations of the Labor Code, and all applicable Industrial Welfare Commission (“IWC”) Orders.

2. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from one (1) year preceding the filing of the PAGA notice, up to and through the time of trial for this matter. Plaintiffs timely exhausted their administrative remedies with the Labor Workforce

1 Development Agency (“LWDA”) by sending a letter stating the facts and theories of liability to the
2 LWDA and a copy to Defendant via certified mail. Plaintiffs waited sixty-five (65) days from the date
3 of their notice to the LWDA before commencing this lawsuit.

4 3. The relevant employees in this action are Defendants’ hourly-paid nonexempt current and
5 former employees during the relevant time period from one (1) year preceding the filing of the PAGA
6 notice, up to and through the time of trial for this matter (hereinafter, the “aggrieved employees”).

7 **SUMMARY OF CLAIMS**

8 4. With regard to Defendants’ aggrieved employees, Defendants have:

9 a. Failed to pay all minimum wages and overtime wages, including but not limited to overtime at
10 the correct legal rate;

11 b. Derivatively failed to timely furnish accurate itemized wage statements; and

12 c. Derivatively violated Labor Code §203.

13 5. Such policies and practices, as described herein, violate the Labor Code, and therefore trigger
14 civil penalties. Therefore, Plaintiffs, on behalf of all aggrieved employees, bring this representative
15 PAGA action pursuant to violations of the Labor Code, seeking penalties for the violations alleged
16 herein, reasonable attorney’s fees and costs, and other relief as deemed proper.

17 **II.**

18 **PARTIES**

19 **PLAINTIFF ROBERTO GONZALEZ SANCHEZ**

20 6. Plaintiff ROBERTO GONZALEZ SANCHEZ is an individual over the age of eighteen (18) and
21 is now and/or at all times mentioned in this Complaint was a citizen of the State of California. Plaintiff
22 YESSICA TRUJILLO is an individual over the age of eighteen (18) and is now and/or at all times
23 mentioned in this Complaint was a citizen of the State of California.

24 7. Plaintiffs worked for Defendants as non-exempt hourly paid employees during the relevant time
25 period in Orange County, California.

26 **DEFENDANTS OAKLEY**

27 8. Defendant OAKLEY is now and/or at all times mentioned in this Complaint was the owner and
28 operator of an industry, business and/or facility licensed to do business and actually doing business in

1 the State of California, county of Orange. DEFENDANT OAKLEY and DOES 1 through 100 were
2 joint employers of Plaintiffs in that they were operating as a joint enterprise and both suffered and
3 permitted Plaintiffs to work for each and both of them; controlled Plaintiffs' hours and working
4 conditions; controlled Plaintiffs' wages. Defendants made the decision to hire Plaintiffs and had control
5 of termination of Plaintiffs' employment and therefore jointly employed Plaintiffs. These Defendants
6 and DOES are collectively hereinafter referred to as "Defendants".

7 DOES 1 TO 100, INCLUSIVE

8 9. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint were
9 licensed to do business and/or actually doing business in California.

10 10. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of
11 DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such fictitious names
12 pursuant to California Code of Civil Procedure ("CCP") §474.

13 11. Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities
14 as soon as they are ascertained.

15 ALL DEFENDANTS

16 12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in
17 some manner legally responsible for the events, happenings and circumstances alleged in this
18 Complaint.

19 13. Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices,
20 wrongs, complaints, injuries and/or damages alleged in this Complaint.

21 14. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were the
22 agents, servants and/or employees of some or all Defendants, and vice-versa, and in doing the things
23 alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were
24 acting within the course and scope of that agency, servitude and/or employment.

25 15. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were
26 members of and/or engaged in a joint venture, partnership and common enterprise, and were acting
27 within the course and scope of, and in pursuance of said joint venture, partnership and common
28 enterprise.

16. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

17. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

18. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III.

JURISDICTION AND VENUE

19. The California Superior Court has jurisdiction in this matter due to Defendants' aforementioned violations of California statutory law and/or related common law principles.

20. The California Superior Court also has jurisdiction in this matter because the aggregate relief sought herein exceeds the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

21. The California Superior Court also has jurisdiction in this matter because during their employment with Defendants, the aggrieved employees were all California citizens. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law.

22. Venue is proper in Orange County pursuant to CCP §395(a) and CCP §395.5 in that liability arose there because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, and/or has an agent therein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §§2698, et seq.

(On Behalf of the Aggrieved Employees)

(Against All Defendants)

23. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

A. FAILURE TO PAY MINIMUM WAGES AND/OR OVERTIME

24. Labor Code §510(a) states in pertinent part: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for any employee.”

25. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

26. The minimum wage for employees with twenty six (26) employees or more is not less than ten dollars fifty cents (\$10.50) per hour on and after January 1, 2017, Eleven dollars (\$11) per hour on and after January 1, 2018, Twelve dollars (\$12) per hour on and after January 1, 2019, Thirteen dollars (\$13) per hour on or after January 1, 2020, Fourteen dollars (\$14) per hour on and after January 1, 2021, Fifteen dollars (\$15) per hour on and after January 1, 2022 and Fifteen dollars (\$15) per hour for all employers regardless of size on and after January 1, 2023.

27. Further, pursuant to Labor Code §1197, payment of less than the minimum wage fixed by the Labor Commission is unlawful.

28. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Order(s).

29. Pursuant to the IWC Wage Order(s), Defendants are required to pay all aggrieved employees for all hours worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work, whether or not required to do so.

30. Defendants, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/or operated by Defendants had a consistent policy of failing to pay wages and/or overtime to Plaintiffs and aggrieved employees. Plaintiff and aggrieved employees were not properly compensated for wages/overtime at the appropriate rate of pay because Defendants required Plaintiffs and aggrieved employees to wait in security check lines when entering and leaving Defendants’ facility. This time spent waiting to undergo and actually undergoing a security check was time during which Plaintiffs and the aggrieved employees were “clocked out” and as such, Plaintiffs

1 and the aggrieved employees were not compensated at the appropriate rate of pay for this time worked.
2 Because Defendants required certain aggrieved employees to remain under Defendants' control without
3 paying therefore, this resulted in those aggrieved employees earning less than the legal minimum wage
4 in the State of California. Defendants have had a consistent policy of failing to pay wages and/or
5 overtime to Plaintiffs and the aggrieved employees. Plaintiff and aggrieved employees who worked one
6 or more pay periods with overtime pay and shift differential pay were not properly compensated at the
7 appropriate rate of pay because Defendants failed to include shift differential pay when calculating
8 Plaintiffs and the aggrieved employees' regular rate in pay periods where they were paid a shift
9 differential pay and were also paid overtime. As such, Plaintiff and the aggrieved employees were paid
10 at a regular rate less than the rate required under California law. Defendants' pattern, practice and
11 uniform administration of corporate policy regarding illegal employee compensation as described
12 herein is unlawful and creates an entitlement to all applicable civil penalties.

13 **B. DERIVATIVE FAILURE TO TIMELY FURNISH ACCURATE ITEMIZED WAGE**
14 **STATEMENTS**

15 31. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time
16 of each payment of wages, furnish each of his or her employees, either as a detachable part of the
17 check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal
18 check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
19 worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates of the
20 period for which the employee is paid... (8) the name and address of the legal entity that is the
21 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee....".

23 32. Further, the IWC Wage Orders §7(A) states in pertinent part: "(A) Every employer shall keep
24 accurate information with respect to each employee including the following: (3) Time records showing
25 when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily
26 hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates
27 of pay...."

28 33. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §7(A), California

1 employers are required to maintain accurate records pertaining to the total hours worked for Defendants
2 by the aggrieved employees, including but not limited to, beginning and ending of each work period,
3 meal period and split shift interval, the total daily hours worked, and the total hours worked per pay
4 period and applicable rates of pay.

5 34. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §7(A),
6 Defendants did not and still do not furnish each of the aggrieved employees with an accurate itemized
7 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all
8 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective
9 pay period and the corresponding number of hours worked at each hourly rate by each respective
10 individual. On a regular and consistent basis, Defendant has failed to provide Plaintiff and the
11 aggrieved employees with itemized wage statements that comply with Labor Code § 226(a). Defendants
12 failed to accurately show total hours worked by the employee in violation of Labor Code § 226(a)(2)
13 and failed to accurately show the applicable hourly rates in effect for shift differential pay and overtime
14 pay as required and the corresponding number of hours worked at each hourly rate in violation of Labor
15 Code § 226(a)(9).

16 35. As set forth herein, Defendants allegedly failed to pay the aggrieved employees all wages due
17 and owing.

18 36. As a derivative result of this failure to pay wages and as a pattern and practice in violation of
19 Labor Code §226(a) and the IWC Wage Orders §7(A), Defendants did not and do not maintain accurate
20 records pertaining to the total hours worked for Defendants by the aggrieved employees, including but
21 not limited to, beginning and ending of each work period, meal period interval, total daily hours
22 worked, total hours worked per pay period, and the applicable rates of pay.

23 37. Pursuant to *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, employers who fail
24 to provide accurate itemized wage statements are subject to PAGA penalties even when the mistake is
25 inadvertent and/or promptly corrected, and even though employees admittedly suffered no injury; said
26 employees are permitted to recover PAGA penalties without needing to prove the “injury” and
27 “knowing and intentional” elements of a Labor Code §226(e) claim. As such, the aggrieved employees
28 are entitled to recovery of penalties pursuant to Labor Code §§2698, et seq.

38. Pursuant to Labor Code §2699(g)(1) and/or §226(e), and/or any other applicable statute, the aggrieved employees are also entitled to an award of costs and reasonable attorneys' fees.

C. DERIVATIVE VIOLATIONS OF LABOR CODE §203

39. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

40. The aggrieved employees are no longer employed by Defendants as they were either discharged from or quit Defendants' employ.

41. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned wages of Defendants' former employees, as set forth above, according to amendment or proof.

42. As set forth above, Defendants willfully failed to pay the aggrieved employees their entire wages due and owing at the time of their termination or within seventy-two (72) hours of their resignation and failed to pay those sums for up to thirty (30) days thereafter.

43. Defendants' willful failure to pay wages to the aggrieved employees violates Labor Code §203 because Defendants knew or should have known wages were due to the aggrieved employees, as set forth above, but Defendants failed to pay them. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all members aggrieved employees quit or were discharged. This failure was willful, without legal justification, and interfered with the rights of Plaintiffs and aggrieved employees who worked one or more pay periods with overtime pay and shift differential pay or had to wait in security check lines when entering and/or leaving Defendants' facility while clocked out.

44. Thus, the aggrieved employees are entitled to recovery of penalties pursuant to Labor Code §§2698, et seq.

F. PENALTIES ASSESSED

45. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development

Agency (“LWDA”) (or any of its departments, divisions, commissions, board agencies or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), the aggrieved employees seek recovery of all applicable civil penalties, including but not limited to the following:

a. As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §204 in the amount of a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for each initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

c. As applicable, civil penalties under Labor Code §256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved employee who was discharged or quit, and was not paid all earned wages at termination in accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum of thirty (30) days;

d. As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

e. Any and all additional applicable civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

46. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties

obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to all aggrieved employees.

47. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

48. Labor Code §2699.3(a) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

49. Labor Code §2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met: (1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

50. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

51. On or about March 23, 2020 and August 26, 2020, Plaintiffs complied with Labor Code §2699.3(a) and Labor Code §2699.3(c) in that Plaintiffs gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

52. Labor Code §2699.3(a) further states in pertinent part: "(2)(A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received

pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.”

53. As of today (more than 65 calendar days after Plaintiffs’ LWDA letters were filed online), Plaintiffs had not received any notification that the LWDA intended to investigate the alleged violations. As such, Plaintiffs have complied with Labor Code §2699.3(a) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

54. Further, as of today (more than 65 calendar days after Plaintiffs’ LWDA letter was mailed via certified mail), Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

As to the First Cause of Action for Penalties Pursuant to Labor Code §2699:

a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

b. For civil penalties under Labor Code §210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

c. For civil penalties per Labor Code §226.3, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$250 for each aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for each subsequent

violation;

d. For civil penalties per Labor Code §256, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of one day of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination, until payment was/is made, up to a maximum of thirty (30) days;

e. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §§2699(g)(1) and any other applicable statute; and

f. For such relief as this Court may deem just and proper, including reasonable attorneys' fees and costs incurred.

DATED: December 23 2020

KOKOZIAN LAW FIRM, APC

By:



Bruce Kokozyan, Esq.
Alex DiBona, Esq.
Attorneys for Plaintiff

DATED: December __, 2020

KINGSLEY & KINGSLEY

By:

Eric B. Kingsley, Esq.
Kelsey M. Szament, Esq.