

From 213.488.6554

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANELE ALDANA, as an individual, on behalf of
all others similarly situated, and as a private
attorney general,

Plaintiffs,

vs.

DAL-TILE SERVICES, INC., a Delaware
corporation; MOHAWK INDUSTRIES, INC., a
Delaware corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

(1) VIOLATION OF LAB. CODE § 226(a);
(2) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.*

DEMAND OVER \$25,000.00

FILED BY FAX

ALAMEDA COUNTY

August 25, 2020

CLERK OF
THE SUPERIOR COURT
By Jessica Flores, Deputy

CASE NUMBER:

RG20071668

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Janele Aldana, submits this Class and Representative Action Complaint against Defendants Daltile Services, Inc., Mohawk Industries, Inc., and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code section 226(a).¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to provide accurate, itemized wage statements. Specifically, Defendants issue wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay and inaccurately stated the total hours worked when employees earned certain wages in addition to their base hourly earnings.

3. Defendants routinely fail to provide accurate, itemized wage statements that state all applicable hourly rates of pay to Plaintiff and other non-exempt employees in California. Whenever Plaintiff and other employees earned overtime wages, Defendants issued wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, the overtime rates appeared as one-half (0.5) the base hourly rate of pay. Defendants also routinely fail to provide accurate, itemized wage statements that state the total hours worked to Plaintiff and other non-exempt employees in California. Whenever Plaintiff and other employees earned certain wages, like overtime or missed meal premiums, in addition to their base hourly earnings, Defendants issued wage statements that inaccurately stated the total hours worked. Defendants thus violate Section 226(a) and owe applicable penalties.

4. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

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6. Venue is proper. Defendants operate in Alameda County. Plaintiff works for Defendants in San Leandro, California.

7. Plaintiff began working for Defendants in or about February of 2018. Throughout her employment as a team lead for sample express, Plaintiff has been paid on an hourly basis as a non-exempt employee. Whenever Plaintiff earns overtime wages, Defendants issue wage statements that list overtime rates of one-half (0.5) the base hourly rate of pay. Whenever Plaintiff earns certain wages, like overtime or missed meal premiums, in addition to her base hourly earnings, Defendants issue wage statements that inaccurately state the total hours worked. For example, on August 6, 2020, Plaintiff's wage statement indicated Plaintiff had worked a total of 43.04 hours and earned \$1,234.82. Those totals would indicate that Plaintiff made \$28.69 per hour, on average, even though Plaintiff had worked overtime and even though her base hourly rate was \$29.20. Plaintiff is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by the Labor Code.

9. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious

defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

10. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

11. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

12. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

13. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all non-exempt employees of Defendants in the State of California who were paid overtime wages at any time since April 6, 2019 (the "Overtime Class"), and (ii) all non-exempt employees of Defendants in the State of California who were paid meal/rest break premiums at any time since April 6, 2019 (the "Meal/Rest Break Class"). The Overtime Class and Meal/Rest Break Class are collectively referred to as the "Class."

14. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes that Defendants violated Section 226(a) by failing to provide accurate, itemized wage statements that state all applicable hourly rates of pay or the total hours worked.

1 15. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
2 represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready,
3 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have
4 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
5 and-hour class actions currently pending in California state and federal courts.

6 16. **Common Question of Law and Fact:** There are predominant common questions of law
7 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
8 informed and believes that Defendants uniformly administer a corporate policy and practice of
9 routinely failing to provide accurate, itemized wage statements that state (i) all applicable hourly rates
10 of pay whenever non-exempt employees in California earn overtime wages, and (ii) the total hours
11 worked whenever non-exempt employees in California earn certain wages, like overtime or missed meal
12 premiums, in addition to their base hourly earnings.

13 17. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
14 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
15 Class suffered. As with other members of the Class, Plaintiff is paid on an hourly basis. Whenever
16 Plaintiff earns overtime wages, Defendants issue wage statements that list overtime rates of one-half (0.5)
17 the base hourly rate of pay. Whenever Plaintiff earns certain wages, like overtime or missed meal
18 premiums, in addition to her base hourly earnings, Defendants issue wage statements that inaccurately state
19 the total hours worked. For example, on August 6, 2020, Plaintiff's wage statement indicated Plaintiff had
20 worked a total of 43.04 hours and earned \$1,234.82. Those totals would indicate that Plaintiff made \$28.69
21 per hour, on average, even though Plaintiff had worked overtime and even though her base hourly rate was
22 \$29.20. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor
23 Code.

24 18. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
25 in establishing minimum working conditions and requirements in California. These labor standards
26 protect employees from onerous terms and conditions of employment or exploitation by employers who
27 have superior economic and bargaining power.

19. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at their current or subsequent employment.

20. The prosecution of separate actions by individual members of the Class, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual members of the Class that would establish potentially incompatible standards of conduct for Defendants, or (b) adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests of other members of the Class not parties to the adjudications. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering the concomitant costs and expenses.

21. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Section 226, the applicable IWC Wage Order, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

FIRST CAUSE OF ACTION

Violation of Labor Code § 226(a)

(By Plaintiff and the Class Against All Defendants)

22. The preceding paragraphs are re-alleged and incorporated by this reference.

23. Section 226(a) requires employers to provide itemized wage statements to its employees that show accurate information, including without limitation, the total hours worked and all applicable

1 hourly rates of pay in effect during the pay period. Defendants fail to provide accurate, itemized wage
2 statements to Plaintiff and the Class in violation of Section 226(a).

3 24. As a matter of policy and practice, Defendants routinely fail to provide accurate,
4 itemized wage statements that state all applicable hourly rates of pay to Plaintiff and the Class.
5 Whenever Plaintiff and the Class earned overtime wages, Defendants issued wage statements that did not
6 identify the overtime rate as 1.5 times the regular rate of pay. Rather, the overtime rates appeared as one-
7 half (0.5) the base hourly rate of pay. As a matter of policy and practice, Defendants also routinely fail to
8 provide accurate, itemized wage statements that state the total hours worked to Plaintiff and the Class.
9 Whenever Plaintiff and the Class earned certain wages, like overtime or missed meal premiums, in addition
10 to their base hourly earnings, Defendants issued wage statements that inaccurately stated the total hours
11 worked. Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiff and other
12 employees.

13 25. Such a pattern, practice, and uniform administration of corporate policy is unlawful
14 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
15 and costs of suit.

16 **SECOND CAUSE OF ACTION**

17 **Violation of Labor Code §§ 2698 *Et Seq.***

18 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

19 26. The preceding paragraphs are re-alleged and incorporated by this reference.

20 27. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
21 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
22 capacity, Plaintiff seeks penalties for Defendants' violations of Section 226(a) committed since April 6,
23 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an "aggrieved employee," as
24 one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

25 28. As stated herein, Defendants violate Section 226(a) by routinely failing to provide
26 accurate, itemized wage statements that state (i) all applicable hourly rates of pay whenever non-exempt
27 employees in California earn overtime wages, and (ii) the total hours worked whenever non-exempt
28

employees in California earn certain wages, like overtime or missed meal premiums, in addition to their base hourly earnings.

29. On or about August 18, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Section 226(a). Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

30. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 226(a) against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties according to proof pursuant to Sections 226.3 and 2698 *et seq.*, and for costs and attorneys' fees;
6. Upon each cause of action for attorneys' fees and costs as provided by Sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: August 25, 2020

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff