

DIVERSITY LAW GROUP, P.C.

Larry W. Lee (State Bar No. 228175)

lwlee@diversitylaw.com

Simon L. Yang (State Bar No. 260286)

sly@diversitylaw.com

515 South Figueroa Street, Suite 1250

Los Angeles, California 90071

Telephone: (213) 488-6555

Facsimile (213) 488-6554

THE CARTER LAW FIRM

Roger R. Carter (State Bar No. 140196)

roger@carterlawfirm.net

23 Corporate Plaza Drive, Suite 150

Newport Beach, California 92660

Telephone: (888) 914-6900

Facsimile (949) 629-2501

THE PHELPS LAW GROUP

Marc H. Phelps (State Bar No. 237036)

marc@phelpslawgroup.com

23 Corporate Plaza Drive, Suite 150

Newport Beach, California 92660

Telephone: (949) 409-1211

Facsimile (949) 629-2501

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Plaintiff,

vs.

CONTROL AIR ENTERPRISES LLC, a
Delaware limited liability company;
CONTROL AIR CONDITIONING CORP.,
a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2020-01155488-CU-OE-CXC

[Assigned for all purposes to the Hon. Glenda
Sanders - Dept.CX101]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

(1) VIOLATION OF LAB. CODE § 226(a);

**(2) VIOLATION OF LAB. CODE §§ 201-
203, 227.3;**

**(3) VIOLATION OF BUS. & PROF. CODE
§§ 17200 ET SEQ.; and**

(4)

**(5) VIOLATION OF LAB. CODE §§ 2698 ET
SEQ.**

DEMAND OVER \$25,000.00

On behalf of herself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Tara Joy, submits this First Amended Class and Representative Action Complaint (the “Complaint”) against Defendants Control Air Enterprises LLC, Control Air Conditioning Corp., 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 and other relief for Defendants’ violations of Labor Code sections 201-203, 226(a), and 227.3.¹

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 and complete wage statements and by failing to pay all wages timely upon the termination of employment.

3. First, Plaintiff and other employees were provided wage statements that failed to list Defendants’ legal name and address. Rather, the wage statements simply identified the name as “CAE Non Union PR” and without any address for the employer. Defendants thus violated Section 226(a).

4. Second, Plaintiff and other employees were not paid all wages, including accrued vacation, upon the end of employment with Control Air Conditioning Corporation on or about June 1, 2019. In part because Plaintiff and other employees were not provided wage statements that showed that their employments with Control Air Conditioning Corporation ended on or about June 1, 2019, and that employments with Control Air Enterprises LLC began on or about June 1, 2019, Plaintiff and other employees were injured by not knowing that they were entitled to immediate payment of wages, including accrued vacation, on or about June 1, 2019. Defendants thus violated Sections 201-203 and 227.3.

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

5. 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.

JURISDICTION AND VENUE

6. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-203, 226(a), and 227.3.

7. Venue is proper. Defendants are located in Orange County. Plaintiff worked for Defendants in Anaheim, California.

PARTIES

8. Plaintiff began working for Defendants in or about October of 2014 in Defendants' HR & Risk Management Department. Beginning on or about May 29, 2019, Plaintiff was provided wage statements that failed to list the name and address of the legal entity that was her employer. Rather, the wage statements simply identified the name as "CAE Non Union PR" and without any address for the employer. Also on or about May 31, 2019, Plaintiff's employment with Control Air Conditioning Corp. ended, but she was not provided immediate payment of all wages, including accrued vacation. 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 is informed and believes that Defendant Control Air Enterprises LLC was and is a Delaware limited liability company and that Defendant Control Air Conditioning Corp. was and is a California corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants and Does 1 through 50, are and were corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-203, 226(a), 227.3.

10. 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.

11. 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.

12. 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.

13. 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

14. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of (i) all current and former non-union employees of Defendants in the State of California who were issued wage statements from May 29, 2019, through August 9, 2020 (the “Wage Statement Class”); and (ii) all current and former employees of Control Air Conditioning Corp. whose employment ended on May 29, 2019 (the “Vacation Class”). The Wage Statement Class and Vacation Class are collectively referred to as the “Class.”

15. **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. Defendants violated Section 226(a) by failing to provide accurate and complete

wage statements that listed Defendants’ legal name and address and violated Sections 201-203 and 227.3 by failing to pay all wages, including accrued vacation, due upon terminations of employment.

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

17. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of failing to provide accurate and complete wage statements that listed Defendants’ legal name and address and instead showed “CAE Non Union PR” without any address for the employer, in violation of Section 226(a). Plaintiff is also informed and believes that Defendants uniformly administer a corporate policy and practice of failing to pay all wages, including accrued vacation, upon the end of employment, in violation of Sections 201-203 and 227.3.

18. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, Plaintiff was provided wage statements that failed to list Defendants’ legal name and address and instead showed “CAE Non Union PR” without any address for the employer and was not paid all wages, including accrued vacation, upon the end of employment. Plaintiff thus is a member of the Class and has suffered the alleged violations of the Labor Code.

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

20. 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.

21. 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.

22. 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 to recover applicable penalties, reasonable attorneys' fees, and costs of suit, pursuant to Section 201-203, 226, and 227.3, and Code of Civil Procedure section 1021.5.

FIRST CAUSE OF ACTION

Violation of Labor Code § 226(a)

(By Plaintiff and the Wage Statement Class Against All Defendants)

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

1 24. Section 226(a) requires employers to provide itemized wage statements to its
2 employees that show accurate information, including without limitation, the name and address of
3 the legal entity that is the employer.

4 25. Defendants fail to provide accurate and complete itemized wage statements to
5 Plaintiff and the Wage Statement Class in violation of Section 226(a). Plaintiff and other
6 employees were provided wage statements that failed to list Defendants' legal name and address.
7 Rather, the wage statements simply identified the name as "CAE Non Union PR" and without
8 any address for the employer. Defendants thus violate Section 226(a).

9 26. Such a pattern, practice, and uniform administration of corporate policy is
10 unlawful and entitles Plaintiff and the Wage Statement Class to recover applicable penalties
11 pursuant to Section 226, attorneys' fees, and costs of suit.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Labor Code §§ 201-203, 227.3**

14 **(By Plaintiff and the Vacation Class Against All Defendants)**

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

16 28. Under California law, the right to a paid vacation, when offered in an employer's
17 policy or contract of employment, constitutes deferred wages for services rendered. Once the
18 right to a paid vacation vests, it becomes part of the consideration earned by the employee and is
19 a protected right under Section 227.3. *See Suastez v. Plastic Dress-Up Co.*, 31 Cal. 3d 774, 780
20 (1982). Section 227.3 specifically provides that where an employee is terminated without having
21 taken off his or her vested vacation time, all vested vacation shall be paid to said employee as
22 wages at the final rate of pay upon termination.

23 29. During their employment with Defendants, Plaintiff and the Vacation Class
24 earned the right to paid vacation days, which could be used for vacations or any other reason.
25 Upon the end of their employments, all earned and unused vacation days were not paid out to
26 Plaintiff and the Vacation Class. Such conduct is a direct violation of Section 227.3.

27 30. Defendants' failure to fully compensate Plaintiff and the Vacation Class their
28 accrued and unused paid vacation balances upon termination of employment constitutes a

1 knowing and willful seizure of vested wages from Plaintiff and the Vacation Class. Defendants'
2 unlawful conduct thus also constitutes a violation of Sections 201 and 202 for the failure to
3 immediately pay all the wages owed to Plaintiff and the Vacation Class. Section 203 provides
4 that, if any employer fails to pay any of the wages owed to an employee who is discharged or
5 quits, the wages of the employee shall continue as a penalty from the due date thereof at the
6 same rate until paid or until an action therefore is commenced, for up to thirty (30) days. As a
7 result, Defendants are liable to Plaintiff and the Vacation Class for waiting time penalties
8 pursuant to Section 203, up to a maximum of thirty (30) days.

9 31. Such a pattern, practice, and uniform administration of corporate policy regarding
10 illegal employee compensation as described herein is unlawful and creates an entitlement to
11 recovery by Plaintiff and the Vacation Class to recover unpaid vacation wages, including interest
12 thereon, applicable penalties, attorneys' fees, and costs of suit.

13 **THIRD CAUSE OF ACTION**

14 **Violation of Business and Professions Code §§ 17200 Et Seq.**

15 **(By Plaintiff and the Vacation Class Against All Defendants)**

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

17 33. Plaintiff is informed and believes that at Defendants have engaged and continue to
18 engage in unfair and unlawful business practices in California by utilizing the employment
19 policies and practices alleged herein. Specifically, Defendants uniformly administer a corporate
20 policy and practice of routinely failing to pay all earned and unused vacation days to Plaintiff
21 and the Vacation Class immediately at the end of Plaintiff and the Vacation Class's
22 employments, in violation of Sections 201, 202, and 227.3.

23 34. Defendants' utilization of such unfair and unlawful business practices constitutes
24 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors,
25 as proscribed by the UCL. Defendants have deprived Plaintiff and the Vacation Class the
26 minimum working condition standards and conditions due to them under the Labor Code and
27 applicable IWC Wage Orders.

35. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Vacation Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

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

(By Plaintiff and Aggrieved Employees Against All Defendants)

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

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

38. As stated herein, Defendants violate Section 226(a) by failing to provide accurate itemized wage statements to Plaintiff and other aggrieved employees, who were provided wage statements that failed to list Defendants' legal name and address and instead showed "CAE Non Union PR" without any address for the employer. As also stated herein, Defendants violate Sections 201-203 and 227.3 by failing to pay all wages timely upon the termination of employment.

39. On or about July 29, 2020, and November 17, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections 201-203, 226(a), and 227.3. 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.

40. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-203, 226(a), and 227.3 against all aggrieved employees for the period described above.

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 damages, including unpaid wages and interest thereon, penalties, attorneys' fees, and costs of suit;
6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, attorneys' fees, and costs of suit;
7. Upon the Fourth Cause of Action for penalties pursuant to Section 2699(a), (f), and (g), attorneys' fees, and costs of suit;
8. Upon each cause of action for attorneys' fees and costs as provided by the Labor Code, UCL, and Code of Civil Procedure section 1021.5; and
9. For such other and further relief that the Court may deem just and proper.

DATED: February 10, 2022

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff and the Class

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18
8 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250,
9 Los Angeles, California 90071.

10 On February 23, 2022, I served the following document(s) described as: **FIRST**
11 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested
12 parties in this action as follows:

12 Ann K. Smith
13 Sarkis A. Atoyan
14 Atkinson, Andelson, Loya, Ruud & Romo
15 12800 Center Court Drive South, Suite 300
16 Cerritos, CA 90703-9364

*Attorneys for Defendants Control Air
Enterprises LLC and Control Air Conditioning
Corp.*

Email: ASmith@aalrr.com
Email: Sarkis.Atoyan@aalrr.com

16 Roger R. Carter
17 THE CARTER LAW FIRM
18 23 Corporate Plaza Drive, Suite 150
19 Newport Beach, CA 92660

Attorneys for Plaintiff Tara Joy

Email: roger@carterlawfirm.net

19 Marc H. Phelps
20 THE PHELPS LAW GROUP
21 23 Corporate Plaza Drive, Suite 150
22 Newport Beach, CA 92660

Attorneys for Plaintiff Tara Joy

Email: marc@phelpslawgroup.com

22 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
23 entitled document(s) to be served through the One Legal E-Filing System at the website
24 www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-
25 entitled case. The service transmission was reported as complete and a copy of the filing
26 receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this
27 office.

26 I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct. Executed on February 23, 2022, at Los Angeles, California.

28 
Linda Lee