

1 MAYALL HURLEY
A Professional Corporation
2 2453 Grand Canal Boulevard
Stockton, California 95207
3 Telephone: (209) 477-3833
Facsimile: (209) 473-4818
4 NICHOLAS F. SCARDIGLI
CA State Bar No. 249947

Electronically Filed
Superior Court of California
County of San Joaquin
2021-08-19 11:31:33
Clerk: Kristy Kobus

5 Attorneys for Plaintiff ADONNE SHELBY
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN

10 ADONNE SHELBY,

11 Plaintiff,

12 vs.

13 GREENLINE TRANSPORT INC.;
14 SMARTWAY LOGISTICS INC.; and
15 DOES 1-10, inclusive,

16 Defendants.
17
18
19
20
21

Case No.: STK-CV-UOE-2021-0004064

FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES FOR

1. WRONGFUL TERMINATION
2. FAILURE TO PAY WAGES
3. FAILURE TO PAY MINIMUM WAGE
4. FAILURE TO INDEMNIFY
5. FAILURE TO FURNISH COMPLETE
AND ACCUATE WAGE STATEMENTS
6. FAILURE TO PAY ALL WAGES UPON
TERMINATION/RESIGNATION
7. VIOLATION OF LABOR CODE §
226(c)
8. VIOLATION OF LABOR CODE §
1198.5(b)
9. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)

JURY TRIAL DEMANDED

22
23 Plaintiff Adonne Shelby (“Shelby”) brings this action against Greenline Transport Inc.
24 (“Greenline”); Smartway Logistics Inc. (“Smartway”); and Does 1-10, inclusive as referred to
25 herein, for compensatory damages, injunctive relief, penalties, interest, costs, and attorneys’ fees
26 resulting from the defendants’ unlawful and tortious conduct. Shelby brings claims both
27 individually and as a proxy for the California Labor and Workforce Development Agency
28 (“LWDA”) under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”).

1 As grounds Shelby therefore alleges:

2 **PARTIES**

3 1. Shelby is and was at all times relevant herein an individual and a resident of
4 California.

5 2. Greenline is and was at all times relevant herein a California corporation.

6 3. Smartway is and was at all times relevant herein a California corporation.

7 4. Greenline, Smartway, and Does 1-10 are referred to collectively herein as
8 “Defendants.”

9 5. Shelby is not aware of the true names and capacities of the defendants sued herein
10 as Does 1-100, whether individual, corporate, associate, or otherwise, and, therefore, sues such
11 defendants by these fictitious names. Shelby will amend this complaint to allege their true names
12 and capacities when ascertained. Shelby is informed and believes, and on that basis alleges, that
13 each of the fictitiously named defendants is responsible in some manner for the occurrences herein
14 alleged and that the injuries and damages herein alleged were legally caused by such defendants.
15 Unless otherwise indicated, each defendant was acting within the course and scope of said agency
16 and/or employment, with the knowledge and/or consent of said co-defendant.

17 **VENUE AND JURY TRIAL DEMAND**

18 6. Venue is proper in this Court because unlawful acts alleged herein as to Shelby,
19 whose employment with Defendants was based in San Joaquin County, took place in San Joaquin
20 County.

21 7. Shelby hereby demands a jury trial.

22 **GENERAL ALLEGATIONS**

23 8. Defendants, as joint employers, employed Shelby in Tracy, California, from January
24 4, 2020, until her unlawful, constructive termination on April 27, 2020.

25 9. On May 21, 2020, Shelby requested, by way of certified letter, that Smartway allow
26 her to inspect and obtain copies of the following items:

- 27 a. Her itemized wage statements from Smartway, pursuant to Labor Code §
28 226(b);

- b. All documents she signed relating to the obtaining or holding of her employment with Smartway, pursuant to Labor Code § 432;
 - c. Her personnel records from Smartway, pursuant to Labor Code § 1198.5(b);
 - d. All of Smartway's records documenting the hours worked and paid sick days accrued and used by Shelby, pursuant to Labor Code § 247.5(a).
10. Smartway received the written request on May 23, 2020.
 11. On January 28, 2021, Shelby requested, by way of certified letter, that Greenline allow her to inspect and obtain copies of the following items:
 - a. Her itemized wage statements from Greenline, pursuant to Labor Code § 226(b);
 - b. All documents she signed relating to the obtaining or holding of her employment with Greenline, pursuant to Labor Code § 432;
 - c. Her personnel records from Greenline, pursuant to Labor Code § 1198.5(b);
 - d. All of Greenline's records documenting the hours worked and paid sick days accrued and used by Shelby, pursuant to Labor Code § 247.5(a).
 12. Greenline received the written request on February 1, 2021.
 13. To date, neither Smartway nor Greenline has permitted Shelby to inspect or obtain copies of the requested records.
 14. Within the relevant time period, including throughout Shelby's employment with Defendants, and in accordance with a uniform, statewide policy throughout California as to all of Defendants' current and former California employees, including Shelby, Defendants knowingly and intentionally failed to timely furnish wage statements in violation of Labor Code § 226(a) to Shelby and all of their current and former California employees. To be clear, Defendants have repeatedly failed to furnish, semimonthly or at the time of each payment of wages, an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

15. Defendants have both failed to furnish **any** wage statements to these individuals and failed to **timely** furnish such wage statements (i.e., Defendants have also furnished wage statements **later** than at the time of each payment of wages, and not semimonthly), again, in violation of Labor Code § 226(a).

16. Also within the relevant time period, including throughout Shelby's employment with Defendants, and in accordance with a uniform, statewide policy throughout California as to all of Defendants' current and former California drivers, including Shelby, Defendants have failed to pay minimum wage by failing to compensate these individuals for all hours worked (i.e., at a rate of \$0 per hour, well less than the applicable minimum wage), including detention time, in violation of Labor Code §§ 218.5, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198. To date, Defendants have yet to compensate these individuals for these unpaid hours worked.

17. As a result of the minimum wage violations, Defendants has also violated Labor Code § 204 as to these individuals, because it has failed to compensation them for the unpaid hours worked, to date, "not more than seven calendar days following the close of the payroll period" in which those wages were earned for weekly, biweekly, and semimonthly payroll periods, and not between the 16th and the 26th day of the month during which the work was performed for work between the 1st and 15th days, inclusive, and between the 1st and the last day of the month, inclusive, for work performed between the 16th and the last day, for bimonthly payroll periods, in violation of Labor Code § 204.

///

///

1 18. Also as a result of the minimum wage violations, Defendants have violated Labor
2 Code §§ 201, 203, and 256 as to former drivers who were discharged by Defendants in the past
3 year, because Defendants have not compensated these individuals for the wages earned and unpaid,
4 to date, long after the time of discharges, again, in violation of Labor Code §§ 201, 203, and 256.

5 19. Likewise, again as a result of the minimum wage violations, Defendants have
6 violated Labor Code §§ 202, 203, and 256 as to former drivers who quit in the past year, because
7 Defendants have not compensated these individuals for the wages earned and unpaid, to date, long
8 after 72 hours after Defendants received notice of the resignations, again, in violation of Labor
9 Code §§ 202, 203, and 256.

10 20. Also within the relevant time period, including throughout Shelby's employment
11 with Defendants, and in accordance with a uniform, statewide policy throughout California as to all
12 of Defendants' current and former California drivers, including Shelby, as to the wage statements
13 that Smartway actually furnished, whether timely or not, in relation to the pay periods in which
14 these individuals worked hours for which Defendants have, to date, failed to compensate them,
15 Defendants have failed to furnish complete and accurate wage statements, in violation of Labor
16 Code §§ 226(a)(1), (2), (5), and (9), because the furnished wage statements fail to accurately show,
17 due to Defendants' failure to compensate these individuals for all hours worked in the
18 corresponding pay periods:

- 19 a. The **actual** gross wages earned, in violation of section 226(a)(1);
- 20 b. The **actual** total hours worked, in violation of section 226(a)(2)
- 21 c. The **actual** net wages earned, in violation of section 226(a)(5); and
- 22 d. All **actual** applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate in violation of
24 section 226(a)(9).

25 21. Defendants have also failed to indemnify Shelby for all necessary expenditures or
26 losses she incurred in direct consequence of the discharge of her duties and her obedience to the
27 directions of the employer, including in relation to a weight-scale ticket.

28 ///

22. Shelby repeatedly complained to Defendants during her employment of Defendants' violations of law, including violations of the Labor Code. Defendants took no action to remedy their ongoing violations of law, including their failure to pay Shelby all wages due and earned. Accordingly, Defendants constructively terminated Shelby's employment on April 27, 2020, because Defendants, by virtue of their continuous violations of law, knowingly permitted working conditions to exist that were so intolerable that a reasonable person in Shelby's position would have had no reasonable alternative except to resign.

FIRST CAUSE OF ACTION
VIOLATION OF LABOR CODE §§ 98.6 and 1102.5
(Wrongful Termination)
Against Defendants

23. Shelby hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

24. Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any manner discriminate against any employee because the employee engaged in any conduct delineated in Chapter 4 of the Labor Code, including the conduct described in 96(k), and Chapter 5 of the Labor Code (Labor Code §§ 1101-1105), or because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code.

25. Labor Code section 1102.5 makes expressly unlawful any form of retaliation against an employee for disclosing to any person with authority over the employee information that the employee has reasonable cause to believe is a violation of a state or federal statute, or local, state, or federal rule or regulation.

26. As evidenced above, Defendants unlawfully, constructively terminated Shelby for complaining of Defendants' ongoing violations of law, including violations of the Labor Code.

27. As a result of Defendants' conduct, Shelby has suffered compensatory damages, including special and general damages.

28. Wherefore, Shelby seeks \$80,400.00 in special damages, \$160,800.00 in general damages, and penalties in the amount of \$20,000.00 on her First Cause of Action.

///

1 **SECOND CAUSE OF ACTION**
2 **VIOLATION OF LABOR CODE §§ 510 and 1198**
3 **(Failure to Pay Wages)**
4 **Against Defendants**

5 29. Shelby hereby realleges and incorporates by reference each and every allegation set
6 forth above as though fully set forth herein.

7 30. As evidenced above, Defendants did not compensate Shelby for all hours she
8 worked.

9 31. Wherefore, Shelby seeks unpaid wages in the amount of \$2,880.00 on her Second
10 Cause of Action.

11 **THIRD CAUSE OF ACTION**
12 **VIOLATION OF LABOR CODE §§ 1182 ET SEQ.**
13 **(Failure to Pay Minimum Wages)**
14 **Against Defendants**

15 32. Shelby hereby realleges and incorporates by reference each and every allegation set
16 forth above as though fully set forth herein.

17 33. Labor Code § 1182.12 provides the applicable minimum wage in California.

18 34. Labor Code § 1197 provides that the minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
20 unlawful.

21 35. As evidenced above, Defendants knowingly and intentionally failed to compensate
22 Shelby for all hours worked, effectively paying her at an hourly rate of \$0, less than the applicable
23 minimum wage.

24 36. Wherefore, Shelby seeks liquidated damages in the amount of \$2,880.00 on her
25 Third Cause of Action.

26 **FOURTH CAUSE OF ACTION**
27 **VIOLATION OF LABOR CODE § 2802**
28 **(Failure to Indemnify)**
 Against Defendants

 37. Shelby hereby realleges and incorporates by reference each and every allegation set
 forth above as though fully set forth herein.

38. Labor Code § 2802(a) requires an employer to indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or if his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

39. As evidenced above, Defendants knowingly and intentionally failed to indemnify Shelby.

40. Wherefore, Shelby seeks reimbursement in the amount of \$920.00 on her Fourth Cause of Action.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226
(Failure to Furnish Wage Statements)
Against Defendants

41. Shelby hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

42. Pursuant to Labor Code § 226(a), “An employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and, (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked

1 for each temporary services assignment.”

2 43. As evidenced above, Defendants knowingly and intentionally failed to timely
3 furnish complete and accurate wage statements to Shelby.

4 44. As a result, Shelby has suffered “injury” as defined in Labor Code § 226(e).

5 45. Wherefore, Shelby seeks penalties in the amount of \$1,650.00 on her Fifth Cause of
6 Action.

7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF LABOR CODE §§ 201-203**
9 **(Failure to Pay All Wages Upon Termination/Resignation)**
10 **Against Defendants**

11 46. Shelby hereby realleges and incorporates by reference each and every allegation set
12 forth above as though fully set forth herein.

13 47. Pursuant to Labor Code §§ 201 and 202, an employer is required to pay all wages
14 earned and unpaid immediately at the time of discharge or within 72 hours of resignation.

15 48. To date, Defendants have failed to pay Shelby all wages earned and unpaid.

16 49. Wherefore, Shelby seeks waiting-time penalties in the amount of \$5,280.00 on her
17 Sixth Cause of Action.

18 **SEVENTH CAUSE OF ACTION**
19 **VIOLATION OF LABOR CODE § 226(c)**
20 **(Failure to Produce Copies of Wage Statements)**
21 **Against Defendants**

22 50. Shelby hereby realleges and incorporates by reference each and every allegation set
23 forth above as though fully set forth herein.

24 51. Pursuant to Labor Code § 226(c) “[a]n employer who receives a written or oral
25 request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or
26 former employee shall comply with the request as soon as practicable, but no later than 21 calendar
27 days from the date of the request.”

28 52. As evidenced above, Shelby made requests in writing to Defendants, by way of a
certified letters, “to inspect and obtain copies of” her “itemized wage statements, pursuant to Labor
Code § 226(b),” yet, to date, Defendants have not permitted Shelby to inspect copies of her

1 itemized wage statements, nor have Defendants provided Shelby copies of these documents.

2 53. Wherefore, Shelby seeks penalties in the amount of \$1,650.00 on her Seventh Cause
3 of Action.

4 **EIGHTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE § 1198.5(b)**
6 **(Failure to Produce Personnel Records)**
7 **Against Defendants**

8 54. Shelby hereby realleges and incorporates by reference each and every allegation set
9 forth above as though fully set forth herein.

10 55. Pursuant to Labor Code § 1198.5(b) an employer who receives a written request to
11 inspect and for copies of his or her personnel records shall make those records available and shall
12 provide copies of the documents, at a charge not to exceed the actual cost of reproduction, within
13 30 calendar days from the date the employer receives the written request.

14 56. As evidenced above, Shelby made requests in writing to Defendants, by way of a
15 certified letters, “to inspect and obtain copies of” her “personnel records, pursuant to Labor Code §
16 1198.5(b),” yet, to date, Defendants have not permitted Shelby to inspect copies of her personnel
17 records, nor have Defendants provided Shelby copies of these documents.

18 57. Wherefore, Shelby seeks a penalty in the amount of \$750.00 on her Eighth Cause of
19 Action.

20 **NINTH CAUSE OF ACTION**
21 **VIOLATIONS OF LABOR CODE § 2698 ET SEQ.**
22 **(Private Attorneys General Act)**
23 **Against Smartway and Does 1-10**

24 58. Shelby hereby realleges and incorporates by reference each and every allegation set
25 forth above as though fully set forth herein.

26 59. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
27 pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”)
28 after the following requirements have been met:

a. The aggrieved employee shall give written notice by certified mail to the
LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of

1 the Labor Code alleged to have been violated, including the facts and theories to support the
2 alleged violations;

3 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
4 employer and the aggrieved employee by certified mail that it does not intend to investigate
5 the alleged violation within 60 calendar days of the postmark date of the Employee’s
6 Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice
7 within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved
8 employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties
9 in addition to any other penalties to which the employee may be entitled.

10 60. Shelby provided written notice by online submission to the LWDA, and by certified
11 mail to Smartway, on September 18, 2020, of Smartway’s violations of the Labor Code set forth
12 above, i.e., failure to pay for all hours worked, in violation of Labor Code §§ 218.5, 510, 558,
13 1182.12, 1194, 1194.2, 1197, and 1198; failure to pay minimum wages, in violation of Labor Code
14 §§ 558, 1182.12, 1194, 1194.2, and 1197; failure to timely pay wages, in violation of Labor Code §
15 204; failure to pay wages upon termination/resignation, in violation of Labor Code §§ 201-203;
16 and failure to furnish complete and accurate wage statements, in violation of Labor Code § 226,
17 including the facts and theories to support the alleged violations. A true and correct copy of
18 Shelby’s written notice is attached hereto as Exhibit 1 and incorporated by reference herein.

19 61. As of today’s date, more than 65 days have passed without the LWDA providing
20 written notice that it intends to investigate the allegations in the September 18, 2020 notice.

21 62. Accordingly, Shelby has satisfied the administrative prerequisites under Labor Code
22 § 2699.3 in effect at the time of the postmark of her notice to bring a civil action to recover
23 penalties against Smartway under PAGA.

24 63. On information and belief, a real and actual controversy exists over the magnitude
25 of the Labor Code violations set forth above regarding current and other former California
26 employees of Smartway.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Shelby prays judgment as follows:

3 **As to the First Cause of Action:**

- 4 1. For special damages in the amount of \$80,400.00;
- 5 2. For general damages in the amount of \$160,800.00;
- 6 3. For a penalty in the amount of \$10,000.00 pursuant to Labor Code § 98.6(b)(3);
- 7 4. For a penalty in the amount of \$10,000.00 pursuant to Labor Code § 1102.5(f);
- 8 5. For statutory attorneys' fees and costs, including but not limited to those available
- 9 under Code of Civil Procedure § 1021.5 and Labor Code § 1102.5(j);
- 10 6. For prejudgment and post-judgment interest; and
- 11 7. For such other and further relief as the court deems just and proper.

12 **As to the Second Cause of Action:**

- 13 1. For unpaid wages in the amount of \$2,880.00;
- 14 2. For statutory attorneys' fees and costs, including but not limited to those available
- 15 under Code of Civil Procedure § 1021.5 and Labor Code § 218.5;
- 16 3. For prejudgment and post-judgment interest; and
- 17 4. For such other and further relief as the court deems just and proper.

18 **As to the Third Cause of Action:**

- 19 1. For liquidated damages in the amount of \$2,880.00;
- 20 2. For statutory attorneys' fees and costs, including but not limited to those available
- 21 under Code of Civil Procedure § 1021.5 and Labor Code § 218.5;
- 22 3. For prejudgment and post-judgment interest; and
- 23 4. For such other and further relief as the court deems just and proper.

24 **As to the Fourth Cause of Action:**

- 25 1. For reimbursement in the amount of \$920.00;
- 26 2. For statutory attorneys' fees and costs, including but not limited to those available
- 27 under Code of Civil Procedure § 1021.5 and Labor Code § 2802(c);
- 28 3. For prejudgment and post-judgment interest; and

4. For such other and further relief as the court deems just and proper.

As to the Fifth Cause of Action:

1. For penalties in the amount of \$1,650.00 pursuant to Labor Code § 226(e)(1);

2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 226(e)(1);

3. For prejudgment and post-judgment interest; and

4. For such other and further relief as the court deems just and proper.

As to the Sixth Cause of Action:

1. For penalties in the amount of \$1,650.00 pursuant to Labor Code § 226(e)(1);

2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 226(e)(1);

3. For prejudgment and post-judgment interest; and

4. For such other and further relief as the court deems just and proper.

As to the Seventh Cause of Action:

1. For a penalty in the amount of \$750.00 pursuant to Labor Code § 226(f);

2. For injunctive relief to ensure compliance with Labor Code § 1198.5(b), pursuant to Labor Code § 226(h);

3. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 226(h);

4. For prejudgment and post-judgment interest; and

5. For such other and further relief as the court deems just and proper.

As to the Eighth Cause of Action:

1. For a penalty in the amount of \$750.00 pursuant to Labor Code § 1198.5(k);

2. For injunctive relief to ensure compliance with Labor Code § 1198.5(b), pursuant to Labor Code § 1198.5(l);

3. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 1198.5(l);

4. For prejudgment and post-judgment; and

5. For such other and further relief as the court deems just and proper.

As to the Ninth Cause of Action:

1. For a declaration that Shelby is an aggrieved employee within the meaning of Labor Code §§ 2699(a) and (c);
2. For a declaration that Smartway has violated Labor Code §§ 201, 202, 203, 204, 218.5, 226, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
3. For a declaration that Smartway is liable for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 218.5, 226, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
4. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
5. For prejudgment and post-judgment interest; and
6. For such other and further relief as the court deems just and proper.

DATED: August 19, 2021

MAYALL HURLEY P.C.

By



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
ADONNE SHELBY

EXHIBIT 1

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818
TELEPHONE (209) 477-3833

WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

September 18, 2020

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/266>

Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

Smartway Logistics Inc.
793 South Tracy Blvd., Suite 327
Tracy, California 95376

Re: Adonne Shelby

To Whom It May Concern:

This firm represents Adonne Shelby relating to her former employment in California, within the last year with Smartway Logistics Inc. ("Smartway") as a driver.

In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Shelby's written notice regarding the following violations, and facts and theories supporting the violations, on Ms. Shelby's behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of all current and other former California employees of Smartway. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>. The \$75.00 filing fee pursuant to Labor Code § 2699.3 is being sent concurrently by separate letter.

On May 21, 2020, Ms. Shelby requested, by way of certified letter, to inspect and obtain copies of the following items:

1. Ms. Shelby's itemized wage statements, pursuant to Labor Code § 226(b);
2. All documents signed by Ms. Shelby relating to the obtaining or holding of her employment, pursuant to Labor Code § 432;
3. Ms. Shelby's personnel records, pursuant to Labor Code § 1198.5(b);
4. All records documenting the hours worked and paid sick days accrued and used by Ms. Shelby, pursuant to Labor Code § 247.5(a).

Labor and Workforce Development Agency

Smartway Logistics Inc.

Re: Adonne Shelby

September 18, 2020

Page 2 of 4

Smartway received the May 21, 2020 certified letter on May 23, 2020. To date, Smartway has yet to respond in any way whatsoever, in violation of Labor Code § 226(c) as to Ms. Shelby's request pursuant to Labor Code § 226(b); in violation of Labor Code § 1198.5(b) in regards to her request pursuant to Labor Code § 1198.5(b); in violation of Labor Code § 432 in regards to her request pursuant to Labor Code § 432; and in violation of Labor Code § 247.5(a) in regards to her request pursuant to Labor Code § 247.5(a).

Within the relevant time period, including within the past year, and in accordance with a uniform, statewide policy throughout California as to all of its current and former California employees, including Ms. Shelby, Smartway knowingly and intentionally failed to timely furnish wage statements in violation of Labor Code § 226(a) to Ms. Shelby and all of its current and former California employees in the past year. To be clear, Smartway has repeatedly failed to furnish, semimonthly or at the time of each payment of wages, an accurate itemized statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee

Smartway has both failed to furnish **any** wage statements to these individuals and failed to **timely** furnish such wage statements (i.e., Smartway has also furnished wage statements **later** than at the time of each payment of wages, and not semimonthly), again, in violation of Labor Code § 226(a).

Also within the relevant time period, including within the past year, and in accordance with a uniform, statewide policy throughout California as to all of its current

Labor and Workforce Development Agency

Smartway Logistics Inc.

Re: Adonne Shelby

September 18, 2020

Page 3 of 4

and former California drivers, including Ms. Shelby, Smartway has failed to pay minimum wage by failing to compensate these individuals for all hours worked (i.e., at a rate of \$0 per hour, well less than the applicable minimum wage), including detention time, in violation of Labor Code §§ 218.5, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198. To date, Smartway has yet to compensate these individuals for these unpaid hours worked.

As a result of the minimum wage violations, Smartway has also violated Labor Code § 204 as to these individuals, because it has failed to compensation them for the unpaid hours worked, to date, “not more than seven calendar days following the close of the payroll period” in which those wages were earned for weekly, biweekly, and semimonthly payroll periods, and not between the 16th and the 26th day of the month during which the work was performed for work between the 1st and 15th days, inclusive, and between the 1st and the last day of the month, inclusive, for work performed between the 16th and the last day, for bimonthly payroll periods, in violation of Labor Code § 204.

Also as a result of the minimum wage violations, Smartway has violated Labor Code §§ 201, 203, and 256 as to former drivers who were discharged by Smartway in the past year, because Smartway has not compensated these individuals for the wages earned and unpaid, to date, long after the time of discharges, again, in violation of Labor Code §§ 201, 203, and 256.

Likewise, again as a result of the minimum wage violations, Smartway has violated Labor Code §§ 202, 203, and 256 as to former drivers who quit in the past year, because Smartway has not compensated these individuals for the wages earned and unpaid, to date, long after 72 hours after Smartway received notice of the resignations, again, in violation of Labor Code §§ 202, 203, and 256.

Also within the relevant time period, including within the past year, and in accordance with a uniform, statewide policy throughout California as to all of its current and former California drivers, including Ms. Shelby, as to the wage statements that Smartway actually furnished, whether timely or not, in relation to the pay periods in which these individuals worked hours for which Smartway has, to date, failed to compensate them, Smartway has failed to furnish complete and accurate wage statements, in violation of Labor Code §§ 226(a)(1), (2), (5), and (9), because the furnished wage statements fail to accurately show, due to Smartway’s failure to compensate these individuals for all hours worked in the corresponding pay periods:

- a. The **actual** gross wages earned, in violation of section 226(a)(1);
- b. The **actual** total hours worked, in violation of section 226(a)(2)

Labor and Workforce Development Agency

Smartway Logistics Inc.

Re: Adonne Shelby

September 18, 2020

Page 4 of 4

- c. The **actual** net wages earned, in violation of section 226(a)(5); and
- d. All **actual** applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ms. Shelby intends to file a civil complaint against Smartway pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 through 2699.5) to seek civil penalties, attorneys' fees, and costs, on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former California employees of Smartway. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



NICHOLAS F. SCARDIGLI

LAW OFFICES
MAYALL, HURLEY
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR
STOCKTON, CALIFORNIA 95207-8253



CERTIFIED MAIL®



9489 0090 0027 6152 3772 87

Label 890-PB, Oct. 2015
Pitney Bowes



U.S. POSTAGE >> PITNEY BOWES



ZIP 95207 \$ 005.75⁰
02 4W
0000369527 SEP. 18. 2020

Smartway Logistics Inc.
793 South Tracy Blvd., Suite 327
Tracy, CA 95376