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Attorneys for Plaintiff ADONNE SHELBY

STK-CV-UOE-2021-0004064

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

ADONNE SHELBY,

Plaintiff,

vs.

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

Defendants.

Case No.:

COMPLAINT FOR DAMAGES AND
PENALTIES FOR

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

JURY TRIAL DEMANDED

Plaintiff Adonne Shelby (“Shelby”) brings this action against Greenline Transport Inc. (“Greenline”); Smartway Logistics Inc. (“Smartway”); and Does 1-10, inclusive as referred to herein, for compensatory damages, injunctive relief, penalties, interest, costs, and attorneys’ fees resulting from the defendants’ unlawful and tortious conduct. Shelby brings claims both individually and as a proxy for the California Labor and Workforce Development Agency (“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 2020, until late April, in Tracy,
24 California.

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);

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

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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.

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

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

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

9 24. Wherefore, Shelby seeks relief as set forth below.

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

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

16 26. Labor Code § 1182.12 provides the applicable minimum wage in California.

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

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

23 29. Wherefore, Shelby seeks relief as set forth below.

24 **THIRD CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 2802**
26 **(Failure to Indemnify)**
27 **Against Defendants**

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

31. 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

1 of his or her duties, or if his or her obedience to the directions of the employer, even though
2 unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

3 32. As evidenced above, Defendants knowingly and intentionally failed to indemnify
4 Shelby.

5 33. Wherefore, Shelby seeks relief as set forth below.

6 **FOURTH CAUSE OF ACTION**
7 **VIOLATION OF LABOR CODE § 226**
8 **(Failure to Furnish Wage Statements)**
9 **Against Defendants**

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

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

28 36. As evidenced above, Defendants knowingly and intentionally failed to timely
furnish complete and accurate wage statements to Shelby.

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

2 38. Wherefore, Shelby seeks relief as set forth below.

3 **FIFTH CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE §§ 201-203**
5 **(Failure to Pay All Wages Upon Termination/Resignation)**
6 **Against Defendants**

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

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

11 41. To date, Defendants have failed to pay Shelby all wages earned and unpaid.

12 42. Wherefore, Shelby seeks relief as set forth below.

13 **SIXTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE § 226(c)**
15 **(Failure to Produce Copies of Wage Statements)**
16 **Against Defendants**

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

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

23 45. As evidenced above, Shelby made requests in writing to Defendants, by way of a
24 certified letters, “to inspect and obtain copies of” her “itemized wage statements, pursuant to Labor
25 Code § 226(b),” yet, to date, Defendants have not permitted Shelby to inspect copies of her
26 itemized wage statements, nor have Defendants provided Shelby copies of these documents.

27 46. Wherefore, Shelby seeks relief as set forth below.

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1198.5(b)
(Failure to Produce Personnel Records)
Against Defendants

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

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

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

50. Wherefore, Shelby seeks relief as set forth below.

EIGHTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 ET SEQ.
(Private Attorneys General Act)
Against Smartway and Does 1-10

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

52. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”) 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 the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;

b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate

1 the alleged violation within 60 calendar days of the postmark date of the Employee's
2 Notice. Upon receipt of the LWDA's Notice, or if the LWDA does not provide notice
3 within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved
4 employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties
5 in addition to any other penalties to which the employee may be entitled.

6 53. Shelby provided written notice by online submission to the LWDA, and by certified
7 mail to Smartway, on September 18, 2020, of Smartway's violations of the Labor Code set forth
8 above, i.e., failure to pay for all hours worked, in violation of Labor Code §§ 218.5, 510, 558,
9 1182.12, 1194, 1194.2, 1197, and 1198; failure to pay minimum wages, in violation of Labor Code
10 §§ 558, 1182.12, 1194, 1194.2, and 1197; failure to timely pay wages, in violation of Labor Code §
11 204; failure to pay wages upon termination/resignation, in violation of Labor Code §§ 201-203;
12 and failure to furnish complete and accurate wage statements, in violation of Labor Code § 226,
13 including the facts and theories to support the alleged violations. As of today's date, more than 65
14 days have passed without the LWDA providing written notice that it intends to investigate the
15 allegations in the September 18, 2020 notice. Accordingly, Shelby has satisfied the administrative
16 prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of her notice to bring
17 a civil action to recover penalties against Smartway under PAGA.

18 54. Wherefore, Shelby requests relief as set forth below.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Shelby prays judgment against Defendants as follows:

21 **As to the First and Second Causes of Action:**

- 22 1. For all unpaid wages;
- 23 2. For restitution;
- 24 3. For penalties, including but not limited to those recoverable under Labor Code §
25 558;
- 26 4. For liquidated damages pursuant to Labor Code §§ 1194.2 and 1197.1;
- 27 5. For civil and statutory penalties;

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6. For attorneys' fees and costs, including those available under Labor Code §§ 218.5 and 1194;
7. For prejudgment and post-judgment interest; and
8. For such other and further relief as the court deems just and proper.

As to the Third Cause of Action:

1. For actual, compensatory, and special damages;
2. For restitution;
3. For attorneys' fees and costs, including but not limited to those available under Labor Code § 2802;
5. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b) and Labor Code § 2802; and
6. For such other and further relief as the Court deems just and proper.

As to the Fourth Cause of Action:

1. For statutory penalties, including but not limited to those available under Labor Code § 226(e);
2. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code § 226(e);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and/or
4. For such other and further relief as the Court deems just and proper.

As to the Fifth Cause of Action:

1. For waiting-time penalties pursuant to Labor Code § 203;
2. For attorneys' fees and costs, including but not limited to those available under Labor Code § 218.5 and Code of Civil Procedure § 1021.5;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available

under Civil Code §§ 3287(a) and 3289(b); and

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

As to the Sixth Cause of Action:

1. For a \$750 penalty under Labor Code § 226(f);

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

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

4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and

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

As to the Seventh Cause of Action:

1. For a \$750 penalty under 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 attorneys' fees and costs, including but not limited to those available under Labor Code § 1198.5(l) and Code of Civil Procedure § 1021.5;

4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and

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

WHEREFORE, Shelby also prays judgment against Smartway and Does 1-10 as follows:

As to the Eighth Cause of Action:

1. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code §§ 204, 226.3, and 2699(f);

2. 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);

- 1 3. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law, including those available under Civil Code
3 §§ 3287(a) and 3289(b); and
4 4. For such other and further relief as the court deems just and proper.
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6 **DATED:** May 5, 2021

MAYALL HURLEY P.C.

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8 By _____



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
ADONNE SHELBY