

1 Larry W. Lee (State Bar No. 228175)
2 Kristen M. Agnew (State Bar No. 247656)
3 Nicholas Rosenthal (State Bar No. 268297)
4 **DIVERSITY LAW GROUP, P.C.**
5 515 S. Figueroa St., Suite 1250
6 Los Angeles, CA 90071
7 (213) 488-6555
8 (213) 488-6554 facsimile

9 William L. Marder, Cal Bar No. 170131
10 POLARIS LAW GROUP, LLP
11 501 San Benito Street, Suite 200
12 Hollister, California 95023
13 Telephone: 831.531.4214
14 Facsimile: 831.634.0333

15 Attorneys for Plaintiff and the Class

16 (Additional Plaintiff's Counsel on Next Page)

17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CHARLES RHYU, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

ATIEVA USA, INC., an unknown entity;
ATIEVA, INC., a California corporation;
Lucid USA, Inc. a Corporation, and DOES
1 through 50, inclusive,

Defendants.

FILED BY FAX
ALAMEDA COUNTY

June 09, 2021

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20084138

CASE NO. RG20084138

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
226(a);**

**(2) VIOLATION OF CAL. LABOR CODE §
2698, ET SEQ.**

DEMAND EXCEEDS \$25,000.00

1 Dennis S. Hyun (State Bar No. 224240)
2 HYUN LEGAL, APC
3 515 S. Figueroa Street, Suite 1250
4 Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

5 Edward W. Choi, Esq. SBN 211334
6 LAW OFFICES OF CHOI & ASSOCIATES
7 515 S. Figueroa St., Suite 1250
8 Los Angeles, CA 90071
9 Telephone: (213) 381-1515
10 Facsimile: (213) 465-4885
11 edward.choi@choiandassociates.com
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Charles Rhyu (“Plaintiff”) hereby submits this Second Amended Class Action
2 Complaint (“Complaint”) against Defendants Atieva USA, Inc., Atieva, Inc. and Lucid USA, Inc.
3 (collectively, the “Company” or “Defendant”), and DOES 1-50 (hereinafter collectively referred
4 to as “Defendants”), individually and on behalf of the Class of all other similarly situated current
5 and former employees of Defendants for penalties and/or damages for violations of the California
6 Labor Code, including without limitation, failure to provide employees with accurate itemized
7 wage statements as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §§
10 226 and 2698, *et seq.* and the California Industrial Welfare Commission’s (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 jointly and severally have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to provide accurate itemized wage statements
16 identifying all required information.

17 **JURISDICTION AND VENUE**

18 4. The Court has jurisdiction over the violations of the California Labor Code §§ 226,
19 and 2698, *et seq.* As alleged below, Plaintiff has met all of the jurisdictional requirements to
20 proceed under the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*

21 5. Venue is proper in Alameda County because Defendants maintain business
22 locations in this County and Plaintiff performed work for Defendants in this County.

23 **PARTIES**

24 6. On or about September 26, 2019, Plaintiff began employment with Defendant as a
25 non-exempt Drive Unit Engineering Technician. On or about October 28, 2020, Plaintiff’s
26 employment with Defendant ended.

27 7. Defendant is a California corporation, as its principal office and nerve center are
28 located in Newark, California. Defendant is a manufacturer and seller of products, including

1 electric vehicles.

2 8. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
3 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by
4 California Labor Code §§ 226 and 2698, *et seq.* and the applicable IWC Wage Orders.

5 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
7 and partnerships, licensed to do business and actually doing business in the State of California.

8 10. As such, and based upon all the facts and circumstances incident to Defendants'
9 business in California, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*
10 and the IWC Wage Orders.

11 11. Plaintiff does not know the true names or capacities, whether individual, partner or
12 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
13 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
14 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
15 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
16 matters alleged herein and proximately caused Plaintiff and members of the general public and
17 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

18 12. At all times herein mentioned, each of said Defendants participated in the doing of
19 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
20 Defendants, and each of them, were the agents, servants and employees of each of the other
21 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
22 within the course and scope of said agency and employment.

23 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
24 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
25 joint venturer of, or working in concert with each of the other co- Defendants and was acting
26 within the course and scope of such agency, employment, joint venture, or concerted activity. To
27 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
28 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
Defendants.

1 14. At all times herein mentioned, Defendants, and each of them, were members of,
2 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
3 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 15. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
9 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
10 the damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure § 382, of the following class:

- 14 a. All current and former non-exempt California employees who were paid
15 any overtime and/or double time wages from Defendant at any time from
16 July 5, 2019, through the present (the “Atieva Class”).
- 17 b. All current and former non-exempt California employees who were paid
18 any overtime and/or double time wages from Defendant at any time from
19 August 31, 2019, through the present (the “Lucid Class”).

20 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identity of the members
22 of the Class is readily ascertainable by review of the Company’s records, including payroll
23 records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to
24 provide accurate itemized wage statements to employees in violation of Labor Code § 226.

25 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
26 necessary steps to represent fairly and adequately the interests of the class defined above.
27 Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the
28 named Plaintiffs. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in
 the past and currently have a number of wage-and-hour class actions pending in California courts.

1 19. The Company uniformly administered a corporate policy, practice of failing to
2 provide accurate itemized wage statements to employees in violation of Labor Code § 226.

3 20. **Common Question of Law and Fact:** There are predominant common questions
4 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
5 concerning the Company's failure to provide accurate itemized wage statements to employees in
6 violation of Labor Code § 226. Specifically, the Company violated Labor Code § 226(a)(9) by
7 failing to list the accurate rate of overtime/double time pay on wage statements issued to Plaintiff
8 and Class Members. Instead of listing the actual overtime/double time rates, Defendant listed the
9 regular rate of pay.

10 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
11 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
12 and typical manner as the Class members. Plaintiff was not provided proper and accurate wage
13 statements identifying all information required by Labor Code § 226(a). Specifically, the
14 Company violated Labor Code § 226(a)(9) by failing to list the accurate rate of overtime/double
15 time pay on wage statements issued to Plaintiff and Class Members. Instead of listing the actual
16 overtime/double time rates, Defendant listed the regular rate of pay. Thus, Plaintiff is a member
17 of the Class and has suffered the alleged violations of California Labor Code §§ 226 and 2698, *et*
18 *seq.*, and the applicable IWC Wage Orders.

19 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
20 remedial in nature. These laws and labor standards serve an important public interest in
21 establishing minimum working conditions and standards in California. These laws and labor
22 standards protect the average working employee from exploitation by employers who may seek to
23 take advantage of superior economic and bargaining power in setting onerous terms and
24 conditions of employment.

25 23. The nature of this action and the format of laws available to Plaintiff and members
26 of the Class identified herein make the class action format a particularly efficient and appropriate
27 procedure to redress the wrongs alleged herein. If each employee were required to file an
28 individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage

1 since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff
2 with Defendants' vastly superior financial and legal resources. Requiring each Class member to
3 pursue an individual remedy would also discourage the assertion of lawful claims by employees
4 who would be disinclined to file an action against their former and/or current employer for real
5 and justifiable fear of retaliation and permanent damage to their careers at subsequent
6 employment.

7 24. The prosecution of separate actions by the individual class members, even if
8 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
9 to individual Class members against the Company and which would establish potentially
10 incompatible standards of conduct for the Company, and/or (b) adjudications with respect to
11 individual Class members which would, as a practical matter, be dispositive of the interest of the
12 other Class members not parties to the adjudications or which would substantially impair or
13 impede the ability of the Class members to protect their interests. Further, the claims of the
14 individual members of the Class are not sufficiently large to warrant vigorous individual
15 prosecution considering all of the concomitant costs and expenses.

16 25. Such a pattern, practice and uniform administration of corporate policy regarding
17 illegal employee compensation described herein is unlawful and creates an entitlement to
18 recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable
19 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
20 of California Labor Code §§ 226 and 2698, *et seq.*, the applicable IWC Wage Orders, and Code
21 of Civil Procedure § 1021.5.

22 26. Proof of a common business practice or factual pattern, which the named Plaintiffs
23 experienced and are representative of, will establish the right of each of the members of the Class
24 to recovery on the causes of action alleged herein.

25 **FIRST CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE § 226(a)**

27 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)**

28 27. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 26 as
though fully set for herein.

1 28. The Company failed in its affirmative obligation to provide accurate itemized
2 wage statements in violation of Labor Code § 226(a). Specifically, the Company violated Labor
3 Code § 226(a)(9) by failing to list the accurate rate of overtime/double time pay on wage
4 statements issued to Plaintiff and Class Members. Instead of listing the actual overtime/double
5 time rates, Defendant listed the regular rate of pay.

6 29. Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
8 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
9 including interest thereon, attorneys' fees, and costs of suit according to the mandate of California
10 Labor Code § 226.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

13 **(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF)**

14 30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as
15 though fully set for herein.

16 31. Plaintiff seeks penalties on behalf of the State of California for violations
17 committed against aggrieved employees for Defendant Atieva USA, Inc. and Atieva, Inc.'s
18 violation of Labor Code § 226(a) for the time period of July 5, 2019, through the present.
19 Specifically, the Company violated Labor Code § 226(a)(9) by failing to list the accurate rate of
20 overtime/double time pay on wage statements issued to Plaintiff and Class Members. Instead of
21 listing the actual overtime/double time rates, Defendant listed the regular rate of pay.

22 32. Plaintiff seeks penalties on behalf of the State of California for violations
23 committed against aggrieved employees for Defendant Lucid USA, Inc.'s violation of Labor
24 Code § 226(a) for the time period of August 31, 2019, through the present. Specifically, the
25 Company violated Labor Code § 226(a)(9) by failing to list the accurate rate of overtime/double
26 time pay on wage statements issued to Plaintiff and Class Members. Instead of listing the actual
overtime/double time rates, Defendant listed the regular rate of pay.

27 33. On or about December 22, 2020, Plaintiff sent notice to the Labor Workforce
28 Development Agency (the "LWDA") of the violations of Labor Code § 226(a) by Defendant

1 Atieva USA, Inc..

2 34. On or about January 22, 2021, Plaintiff sent a supplemental notice to the LWDA
3 of the violation of Labor Code §226(a) by Defendant Lucid USA, Inc.

4 35. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiff
5 whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties
6 under the PAGA.

7 36. Such a pattern, practice and uniform administration of corporate policy as
8 described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of
9 the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code §§ 226.3
10 and 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate
11 of PAGA for Defendant's violations of Labor Code § 226, as well as attorneys' fees and costs.

12 **PRAYER FOR RELIEF**

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

- 15 1. For an order certifying the proposed Class;
- 16 2. For an order appointing Plaintiff as the representative of the Class as described
17 herein;
- 18 3. For an order appointing counsel for Plaintiff as Class counsel;
- 19 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
20 California Labor Code § 226, and for costs and attorneys' fees;
- 21 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
22 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
- 23 6. On all causes of action, for attorneys' fees and costs as provided by California
24 Labor Code §§ 226, and 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and
- 25 7. For such other and further relief as the Court may deem just and proper.

26 DATED: June 9, 2021

DIVERSITY LAW GROUP, P.C.

27 By: 

Larry W. Lee

Attorneys for PLAINTIFF and the CLASS

PROOF OF SERVICE

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

On June 9, 2021, I served the foregoing document(s) described as: **SECOND AMENDED CLASS ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

DEREK R. HAVEL, Cal. Bar No. 193464
dhavel@sheppardmullin.com
DANIEL J. McQUEEN, Cal. Bar No. 217498
dmcqueen@sheppardmullin.com
DAVID A. ALVAREZ, Cal. Bar No. 322976
dalvarez@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071-1422

BY MAIL

As follows: I am “readily familiar” with the practice of Choi & Associates, Attorneys at Law for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the ordinary course of business.

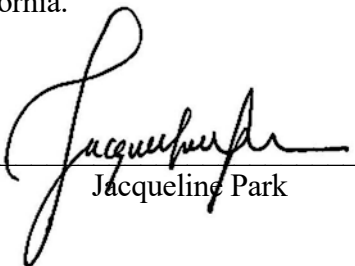
X BY ELECTRONIC SERVICE

X I caused such document to be served on the offices of the addressees via electronic transmission.

X (State) I declare under penalty of perjury that the foregoing is true and correct.

(Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 9, 2021, at Los Angeles, California.


Jacqueline Park