

From 213.488.6554

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ALAMEDA**

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

15 Plaintiffs,

16 v.

17 ATIEVA USA, INC., an unknown entity;
18 ATIEVA, INC., a California corporation;
and DOES 1 through 50, inclusive,

19 Defendants.

FILED BY FAX

ALAMEDA COUNTY

December 30, 2020

CLERK OF
THE SUPERIOR COURT
By Shabra Iyamu, Deputy

CASE NUMBER:

RG20084138

CASE NO.

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

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1 Plaintiff Charles Rhyu (“Plaintiff”) hereby submits this Class Action Complaint
2 (“Complaint”) against Defendants Atieva USA, Inc. and Atieva, Inc. (collectively, the
3 “Company” or “Defendant”), and DOES 1-50 (hereinafter collectively referred to as
4 “Defendants”), individually and on behalf of the Class of all other similarly situated current and
5 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 employee. On or about October 28, 2020, Plaintiff’s employment with Defendant
26 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 classes:

- 14 a. All current and former California employees who were paid any wages
15 from Defendant at any time from July 1, 2019, through the present (the
16 “Name of Employer Class”); and
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 July 1, 2019, through the present (the “Hourly Rate Class”).

20 These Classes will be collectively referred to as the “Class” and/or “Classes.”

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

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

1 the past and currently have a number of wage-and-hour class actions pending in California courts.

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

4 20. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
6 concerning the Company's failure to provide accurate itemized wage statements to employees in
7 violation of Labor Code § 226. Specifically, the Company violated Labor Code § 226(a)(9) by
8 failing to list the accurate rate of overtime/double time pay on wage statements issued to Plaintiff
9 and Class Members. Instead of listing the actual overtime/double time rates, Defendant listed the
10 regular rate of pay. Additionally, Defendant failed to list the name and address of the legal entity
11 that is the employer on wage statements issued to Plaintiff and Class Members. Defendant listed
12 "Atieva USA, Inc.," but there is no such entity registered as a corporation in the State of
13 California. Thus, Defendant also violated Labor Code § 226(a)(8).

14 21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all
15 members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar
16 and typical manner as the Class members. Plaintiff was not provided proper and accurate wage
17 statements identifying all information required by Labor Code § 226(a). Specifically, the
18 Company violated Labor Code § 226(a)(9) by failing to list the accurate rate of overtime/double
19 time pay on wage statements issued to Plaintiff and Class Members. Instead of listing the actual
20 overtime/double time rates, Defendant listed the regular rate of pay. Additionally, Defendant
21 failed to list the name and address of the legal entity that is the employer on wage statements
22 issued to Plaintiff and Class Members. Defendant listed "Atieva USA, Inc.," but there is no such
23 entity registered as a corporation in the State of California. Thus, Defendant also violated Labor
24 Code § 226(a)(8). Thus, Plaintiff is a member of the Class and has suffered the alleged violations
25 of California Labor Code §§ 226 and 2698, *et seq.*, and the applicable IWC Wage Orders.

26 22. The California Labor Code and upon which Plaintiff bases these claims is broadly
27 remedial in nature. These laws and labor standards serve an important public interest in
28 establishing minimum working conditions and standards in California. These laws and labor

standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

23. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein 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 Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class member 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 and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

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

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

26. Proof of a common business practice or factual pattern, which the named Plaintiffs

1 experienced and are representative of, will establish the right of each of the members of the Class
2 to recovery on the causes of action alleged herein.

3 **FIRST CAUSE OF ACTION**

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

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

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

8 28. The Company failed in its affirmative obligation to provide accurate itemized
9 wage statements in violation of Labor Code § 226(a). Specifically, the Company violated Labor
10 Code § 226(a)(9) by failing to list the accurate rate of overtime/double time pay on wage
11 statements issued to Plaintiff and Class Members. Instead of listing the actual overtime/double
12 time rates, Defendant listed the regular rate of pay. Additionally, Defendant failed to list the
13 name and address of the legal entity that is the employer on wage statements issued to Plaintiff
14 and Class Members. Defendant listed “Atieva USA, Inc.,” but there is no such entity registered
15 as a corporation in the State of California. Thus, Defendant also violated Labor Code § 226(a)(8).

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

21 **SECOND CAUSE OF ACTION**

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

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

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

26 31. Plaintiff seeks penalties on behalf of the State of California for violations
27 committed against aggrieved employees for Defendants’ violation of Labor Code § 226(a) for the
28 time period of June 24, 2019, through the present. Specifically, the Company violated Labor

1 Code § 226(a)(9) by failing to list the accurate rate of overtime/double time pay on wage
2 statements issued to Plaintiff and Class Members. Instead of listing the actual overtime/double
3 time rates, Defendant listed the regular rate of pay. Additionally, Defendant failed to list the
4 name and address of the legal entity that is the employer on wage statements issued to Plaintiff
5 and Class Members. Defendant listed “Atieva USA, Inc.,” but there is no such entity registered
6 as a corporation in the State of California. Thus, Defendant also violated Labor Code § 226(a)(8).

7 32. On or about December 23, 2020, Plaintiff sent notice to the Labor Workforce
8 Development Agency (the “LWDA”) of the violations of Labor Code § 226(a).

9 33. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiff
10 whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties
11 under the PAGA.

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

17 **PRAYER FOR RELIEF**

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

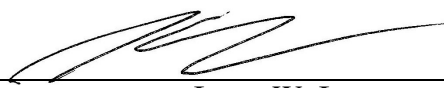
- 20 1. For an order certifying the proposed Class;
- 21 2. For an order appointing Plaintiff as the representative of the Class as described
22 herein;
- 23 3. For an order appointing counsel for Plaintiff as Class counsel;
- 24 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
25 California Labor Code § 226, and for costs and attorneys’ fees;
- 26 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
27 to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys’ fees;
- 28 6. On all causes of action, for attorneys’ fees and costs as provided by California
Labor Code §§ 226, and 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and

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7. For such other and further relief as the Court may deem just and proper.

DATED: December 28, 2020

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Attorneys for PLAINTIFF and the CLASS