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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 LILLYE BUCKANS, on behalf of the State  
15 of California, as a private attorney general,

16 Plaintiff,

17 vs.

18 ADVANCE KIDS, INC., a California  
19 Corporation; and DOES 1 through 50,  
20 inclusive,

21 Defendants.

Case No. \_\_\_\_\_

**REPRESENTATIVE ACTION**  
**COMPLAINT FOR:**

1.Civil Penalties Pursuant to Labor Code  
§ 2699, *et seq.* for violations of Labor  
Code §§ 201, 202, 203, 204 *et seq.*, 210,  
221, 226(a), 226.7, 233, 246, 351, 510,  
512, 558(a)(1)(2), 1194, 1197, 1197.1,  
1198, 2802, California Code of  
Regulations, Title 8, Section 11040,  
Subdivision 5(A)-(B)

FILED

Superior Court Of California,  
Sacramento

07/01/2021

HJohnson12

By \_\_\_\_\_, Deputy

Case Number:

34-2021-00303547

1 Plaintiff Lillye Buckans (“PLAINTIFF”), on behalf of the people of the State of  
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor  
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on  
4 information and belief, except for her own acts and knowledge which are based on personal  
5 knowledge, the following:

### 6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant ADVANCE KIDS, INC.  
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of  
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does  
10 **not seek to recover anything other than penalties as permitted by California Labor Code**  
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF  
12 does not seek underlying general and/or special damages for those violations, but simply the  
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on  
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole  
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for  
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that  
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this  
20 complaint should be construed as attempting to obtain any relief that would not be available in  
21 a PAGA-only action.

### 22 **THE PARTIES**

23 4. Defendant Advance Kids, Inc. (“DEFENDANT”) is a California Corporation that  
24 at all relevant times mentioned herein conducted and continues to conduct substantial business  
25 in the state of California.

26 5. DEFENDANT provides in-home services, center based services, educational  
27 services and non-public preschool services to help individuals of all ages and disabilities.  
28

1           6.     PLAINTIFF was employed by DEFENDANT in California from June of 2019  
2 until August of 2020 and was at all times classified by DEFENDANT as a non-exempt  
3 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and  
4 payment of minimum and overtime wages due for all time worked.

5           7.     PLAINTIFF and such persons that may be added from time to time who satisfy  
6 the requirements and exhaust the administrative procedures under the Private Attorney General  
7 Act, brings this Representative Action on behalf of the State of California with respect to herself  
8 and all individuals who are or previously were employed by DEFENDANT in California and  
9 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES") during the  
10 time period of February 26, 2020 until a date as determined by the Court (the "PAGA  
11 PERIOD").

12           8.     PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently  
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative  
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's  
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,  
16 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of  
17 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).  
18 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved  
19 employees within the meaning of Labor Code § 2699, *et seq.*

20           9.     The true names and capacities, whether individual, corporate, subsidiary,  
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently  
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant  
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege  
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.  
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that  
26 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are  
27 responsible in some manner for one or more of the events and happenings that proximately  
28 caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

## THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the other AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, before clocking in, PLAINTIFF and the AGGRIEVED EMPLOYEES, were required to wait in-line for a COVID-19 screening, one which included questions about their current set of symptoms before being each employee was scanned and screened for a fever. PLAINTIFF was not allowed to clock in until this process was completed. Also, DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and the other AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. DEFENDANT's policy and

1 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,  
2 is evidenced by DEFENDANT's business records. As a result, DEFENDANT failed to pay  
3 PLAINTIFF and other AGGRIEVED EMPLOYEES the proper minimum and overtime wages.

4 12. In addition, state law provides that employees must be paid overtime at one-and-  
5 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES  
6 were compensated at an hourly rate plus incentive pay that is tied to specific elements of an  
7 employee's performance.

8 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'  
9 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF  
10 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for  
11 DEFENDANT. The non-discretionary incentive program provided all employees paid on an  
12 hourly basis with incentive compensation when the employees met the various performance  
13 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay  
14 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to  
15 include the incentive compensation as part of the employees' "regular rate of pay" for purposes  
16 of calculating overtime pay. As a matter of law, the incentive compensation received by  
17 PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular rate of  
18 pay." The failure to do so has resulted in an underpayment of overtime compensation to  
19 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

20 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED  
21 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF  
22 and other non-exempt employees regularly earn non-discretionary remuneration, including but  
23 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the  
24 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED  
25 EMPLOYEES at their base rates of pay.

26 15. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED  
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks  
28 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT  
2 for more than five (5) hours during some shifts without receiving a meal break. Further,  
3 DEFENDANT from time to time failed to provide PLAINTIFF and other AGGRIEVED  
4 EMPLOYEES with a second off-duty meal period for some workdays in which these employees  
5 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other  
6 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation  
7 and in accordance with DEFENDANT's corporate policy and practice.

8 16. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES  
9 were also required from time to time to work in excess of four (4) hours without being provided  
10 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at  
11 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to  
12 time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
13 between six (6) and eight (8) hours from time to time, and a first, second and third rest period  
14 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.  
15 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour  
16 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers  
17 to provide employees with off-duty rest periods, which the California Supreme Court defined  
18 as time during which an employee is relieved from all work related duties and free from  
19 employer control. In so doing, the Court held that the requirement under California law that  
20 employers authorize and permit all employees to take rest period means that employers must  
21 relieve employees of all duties and relinquish control over how employees spend their time  
22 which includes control over the locations where employees may take their rest period.  
23 Employers cannot impose controls that prohibit an employee from taking a brief walk - five  
24 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other  
25 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on  
26 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could  
27 not leave the work premises during their rest period. As a result of PLAINTIFF being required  
28 to be present on the premises she was from time to time required by DEFENDANT to work

1 during what should of been her off duty rest period.

2 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay  
3 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these  
4 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,  
5 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all  
6 time worked, meaning the time during which an employee was subject to the control of an  
7 employer, including all the time the employee was permitted or suffered to permit this work.  
8 DEFENDANT required these employees to work off the clock without paying them for all the  
9 time they were under DEFENDANT's control including, but not limited to, time spent  
10 undergoing mandatory drug testing or any other testing and/or examination required as a  
11 condition of employment. Also, PLAINTIFF worked through her various meal and rest breaks  
12 as she was often interrupted by deliveries and/or requests for security coverage. This work also  
13 was done off-the-clock. As such, DEFENDANT knew or should have known that PLAINTIFF  
14 and the other AGGRIEVED EMPLOYEES were under compensated for all time worked. As  
15 a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited time worked by working  
16 without their time being accurately recorded and without compensation at the applicable  
17 minimum wage and overtime wage rates. To the extent that the time worked off the clock did  
18 not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for  
19 the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

20 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify  
21 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses  
22 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of  
23 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section  
24 2802, employers are required to indemnify employees for all expenses incurred in the course  
25 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer  
26 shall indemnify his or her employee for all necessary expenditures or losses incurred by the  
27 employee in direct consequence of the discharge of his or her duties, or of his or her  
28 obedience to the directions of the employer, even though unlawful, unless the employee, at

1 the time of obeying the directions, believed them to be unlawful."

2 19. In the course of their employment PLAINTIFF and other AGGRIEVED  
3 EMPLOYEES as a business expense, were required by DEFENDANT to use their own  
4 personal cellular phones as a result of and in furtherance of their job duties as employees for  
5 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost  
6 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a  
7 result, in the course of their employment with DEFENDANT, PLAINTIFF and other  
8 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but  
9 were not limited to, costs related to the use of their personal cellular phones all on behalf of  
10 and for the benefit of DEFENDANT.

11 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
12 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which  
13 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code  
14 § 226 provides that every employer shall furnish each of his or her employees with an  
15 accurate itemized wage statement in writing showing, among other things, gross wages  
16 earned and all applicable hourly rates in effect during the pay period and the corresponding  
17 amount of time worked at each hourly rate. PLAINTIFF and the other AGGRIEVED  
18 EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all  
19 applicable hourly rates during the pay period and the total hours worked, and the applicable  
20 pay period in which the wages were earned pursuant to California Labor Code Section  
21 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other  
22 AGGRIEVED EMPLOYEES failed to identify such information. Aside, from the violations  
23 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized  
24 wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a  
25 result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED  
26 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

27 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer  
28

1 to collect or receive from an employee any part of wages theretofore paid by said employer  
2 to said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and  
3 other AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable  
4 to PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the  
5 deductions from compensation payable to PLAINTIFF and the AGGRIEVED  
6 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable  
7 pay period and upon termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek  
8 recovery of all illegal deductions from wages according to proof, related penalties, interest,  
9 attorney fees and costs.

10 22. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any  
11 employment are due and payable twice during each calendar month, on days designated in  
12 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly  
13 requires employers to pay employees all wages owed within eleven (11) days of the close of  
14 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other  
15 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close  
16 of the payroll period.

17 23. In violation of the applicable sections of the California Labor Code and the  
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT  
19 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED  
20 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT  
21 is intended to purposefully avoid the payment for all time worked as required by California  
22 law which allows DEFENDANT to illegally profit and gain an unfair advantage over  
23 competitors who complied with the law. To the extent equitable tolling operates to toll  
24 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD  
25 should be adjusted accordingly.

26 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED  
27 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which  
28 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and

1 other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal  
2 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional  
3 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate  
4 and/or pay all required compensation for work performed by the AGGRIEVED  
5 EMPLOYEES and violated the California Labor Code and regulations promulgated  
6 thereunder as herein alleged.

7 25. All of the conduct and violations alleged herein occurred during the PAGA  
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
9 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations  
10 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*  
11 2018 AJDAR 12157 (Certified for Publication 12/19/18).

#### 12 **JURISDICTION AND VENUE**

13 26. This Court has jurisdiction over this Action pursuant to California Code of  
14 Civil Procedure, Section 410.10.

15 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
16 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and  
17 DEFENDANT (i) currently maintains and at all relevant times maintained offices and  
18 facilities in this County and/or conducts substantial business in this County, and (ii)  
19 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the  
20 AGGRIEVED EMPLOYEES.

#### 21 **FIRST CAUSE OF ACTION**

##### 22 **For Violation of the Private Attorneys General Act**

23 **[Cal. Lab. Code §§ 2698, *et seq.*]**

24 **(By PLAINTIFF and Against All Defendants)**

25 28. PLAINTIFF realleges and incorporates by this reference, as though fully set  
26 forth herein, the prior paragraphs of this Complaint.

27 29. PAGA is a mechanism by which the State of California itself can enforce state  
28

1 labor laws through the employee suing under the PAGA who do so as the proxy or agent of  
2 the state's labor law enforcement agencies. An action to recover civil penalties under  
3 PAGA is fundamentally a law enforcement action designed to protect the public and not to  
4 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,  
5 but to create a means of "deputizing" citizens as private attorneys general to enforce the  
6 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the  
7 public interest to allow aggrieved employees, acting as private attorneys general to recover  
8 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA  
9 claims cannot be subject to arbitration.

10 30. PLAINTIFF, and such persons that may be added from time to time who  
11 satisfy the requirements and exhaust the administrative procedures under the Private  
12 Attorney General Act, brings this Representative Action on behalf of the State of California  
13 with respect to herself and all individuals who are or previously were employed by  
14 DEFENDANT in California and who were classified as non exempt employees  
15 ("AGGRIEVED EMPLOYEES") during the time period of February 26, 2020 until a date as  
16 determined by the Court (the "PAGA PERIOD").

17 31. On February 26, 2021, PLAINTIFF gave written notice by electronic mail to  
18 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
19 employer of the specific provisions of this code alleged to have been violated as required by  
20 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations  
21 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now  
22 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy  
23 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

24 32. The policies, acts and practices heretofore described were and are an unlawful  
25 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the  
26 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly  
27 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,  
28 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for

1 required expenses, and (f) failed to pay wages when due, all in violation of the applicable  
2 Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a),  
3 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California  
4 Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage  
5 Order(s), and thereby gives rise to civil penalties as a result of such conduct.<sup>1</sup> PLAINTIFF  
6 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private  
7 Attorney General Act of 2004 as the representative of the State of California for the illegal  
8 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
12 severally, as follows:

13 1. On behalf of the State of California and with respect to all AGGRIEVED  
14 EMPLOYEES:

15 A) Recovery of civil penalties as prescribed by the Labor Code Private  
16 Attorneys General Act of 2004; and,

17 B) An award of attorneys' fees and cost of suit, as allowable under the  
18 law, including, but not limited to, pursuant to Labor Code §2699.

19 Dated: June 29, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW  
LLP

20  
21  
22  
23 By: 

Norman B. Blumenthal  
Attorneys for Plaintiff

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25  
26  
27  
28 <sup>1</sup>Plaintiff specifically excludes and/or does not allege any claims under California Labor  
Code §558(a)(3).