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Attorneys for Plaintiff LEOVARDO HERNANDEZ,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LEOVARDO HERNANDEZ, on behalf of the
general public as private attorney general,

Plaintiffs,

v.

USF REDDAWAY, INC., dba REDDAWAY
an Oregon Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff LEOVARDO HERNANDEZ (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants USF REDDAWAY, INC., dba REDDAWAY and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to accurately pay overtime, (b) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (c) failing to pay all wages earned and owed upon separation from Defendant’s employ, and (d) failing to provide accurate itemized wage statements. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the

1 California Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendants are doing business throughout California, including but
4 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
5 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
6 and all other aggrieved employees within the State of California. Defendants employ numerous
7 aggrieved employees in in the State of California.

8 6. On information and belief, Defendants have conducted business within the State of
9 California during the purported liability period and continue to conduct business throughout the
10 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
11 similarly situated non-exempt aggrieved employees within California.

12 7. The California Superior Court also has jurisdiction in this matter because on
13 information and belief there are no federal questions at issue, as the issues herein are based solely
14 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
15 California Code of Civil Procedure, the California Civil Code, and the California Business and
16 Professions Code.

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendant consistently maintained and enforced against
19 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
20 and policies, in violation of California state wage and hour laws: (a) failure to accurately pay
21 overtime, (b) failure to provide rest breaks for every four hours or major fraction thereof worked
22 and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu
23 of providing a rest period; (c) failing to pay all wages earned and owed upon separation from
24 Defendant's employ, and (d) failing to provide accurate itemized wage statements.

25 9. Plaintiff on behalf of the general public as private attorney general and all other
26 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
27 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
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1 1174.5, 1175, 1194, 1198, and seeking penalties, interest, attorneys' fees and costs.

2 **III. PARTIES**

3 **A. Plaintiff**

4 10. Plaintiff, LEOVARDO HERNANDEZ, was at all times relevant to this action,
5 a resident of California. Plaintiff was employed by Defendants in approximately July 2016 as a
6 Non-Exempt Employee and worked during the liability period as a Dock Worker/Freight Handler
7 for Defendants until his separation from Defendants' employ in approximately April 2020.

8 11. As Defendants' employee, Plaintiff, and all other aggrieved employees were
9 regularly required to and subsequently suffered:

- 10 a) perform work subject to the control of the employer without being accurately
11 compensated all overtime wages, all in violation of California labor laws, regulations,
12 and the Industrial Welfare Commission Wage Order ("IWC");
13 b) work without being permitted or authorized a minimum ten-minute rest period for
14 every four hours or major fraction thereof worked and not compensated one (1) hour of
15 pay at his regular rate of compensation for each workday that a rest period was not
16 provided, all in violation of California labor laws, regulations, and the Industrial
17 Welfare Commission Wage Orders ("IWC"); and
18 c) not provided accurate itemized wage statements.

19 12. On information and belief, Defendants willfully failed to pay all earned wages in
20 the form overtime wages, and rest period premium wages, to its Non-Exempt Employees and
21 members of the Representative Group; nor have Defendants returned to Plaintiff or members of
22 the Representative Group, upon or after separation from employment with Defendants, all wages
23 earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the
24 general public as private attorney general and all other aggrieved employees..

25 **B. Defendants**

26 13. On information and belief, Defendants USF REDDAWAY, INC., dba
27 REDDAWAY are engaged in the ownership and operation of a trucking and logistics company
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1 and operates its business across California. Plaintiff estimates there are in excess of 100 Non-
2 Exempt Employees who work or have worked for Defendants over the last year.

3 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,
4 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
5 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
6 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
7 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
8 are ascertained.

9 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
10 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
11 Representative Group , and exercised control over their wages, hours, and working conditions.
12 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
13 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
14 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
15 to the other defendants.

16 IV. GENERAL ALLEGATIONS

17 16. At all times set forth herein, Defendants employed Plaintiff and other persons in
18 the capacity of non-exempt positions, however titled, throughout the state of California.

19 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
20 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
21 rules and regulations of the IWC California Wage Orders.

22 18. Defendants employed Plaintiff as a Non-Exempt hourly paid employee during the
23 liability period in various cities in California including but not limited to Livingston, Atwater, Dos
24 Palos, Tracy, Mariposa, and Manteca.

25 19. Defendants continue to employ Non-Exempt Employees, however titled, in
26 California and implement a uniform set of policies and practices to all non-exempt employees, as
27 they were all engaged in the generic job duties of providing agricultural labor.
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1 20. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
2 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
3 the requirements of California's wage and employment laws.

4 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
5 Employees based upon an hourly rate.

6 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
7 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
8 week.

9 23. Defendants failed to properly calculate Plaintiff's and the Aggrieved Employees'
10 regular rate of pay because Defendants failed to include all forms of compensation in the regular
11 rate including differentials, bonuses, incentives, commissions, and other compensation resulting
12 in the inaccurate payment of overtime wages.

13 24. During the relevant time frame, Plaintiff and the Non-Exempt Employees were
14 systematically not authorized and permitted to take one net ten-minute paid, rest period for every
15 four hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage
16 order. In addition, during the relevant time frame, Plaintiff and the Non-Exempt Employees were
17 systematically not authorized and permitted to take one (1) net ten (10) minute paid, rest period
18 for every four (4) hours worked or major fraction thereof, which is a violation of the Labor Code
19 and IWC wage order.
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21 25. Upon information and belief, Plaintiff and the Aggrieved Employees were not
22 permitted to leave the premises during rest periods.

23 26. Despite the above-mentioned rest period violations, Defendants did not compensate
24 Plaintiff, and on information and belief, did not pay Aggrieved Employees one (1) additional hour
25 of pay at their regular rate as required by California law, including Labor Code section 226.7 and
26 the applicable IWC wage order, for each day on which lawful rest periods were not authorized and
27 permitted

28 27. Defendants also failed to provide accurate, lawful itemized wage statements to

1 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
2 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
3 worked, including premiums due and owing for rest period violations, gross pay and net pay
4 figures, and applicable rates for overtime, sick pay, and other rates of pay from Plaintiff and the
5 Aggrieved Employees' wage statements.

6 28. Plaintiff are informed and believe, and thereon alleges, that at all times herein
7 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
8 thereof for resignations without prior notice as the case may be) they had a duty to accurately
9 compensate Plaintiff and Aggrieved Employees for all wages owed for overtime wages and rest
10 period premiums, and that Defendants had the financial ability to pay such compensation, but
11 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
12 specified violations.

13 29. Upon information and belief, Defendants knew and or should have known that it is
14 improper to implement policies and commit unlawful acts such as:

15 (a) requiring employees to work four (4) hours or a major fraction thereof without
16 being provided a minimum ten (10) minute rest period and without compensating the employees
17 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
18 rest period was not provided;

19 (b) failing to accurately pay Plaintiff and Aggrieved Employees overtime wages owed;

20 (c) failing to timely pay Plaintiff and Aggrieved Employees;

21 (d) failing to provide accurate itemized wage statements; and

22 (e) conducting and engaging in unfair business practices.

23 30. In addition to the violations above, and on information and belief, Defendants knew
24 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
25 herein and that Defendants had the financial ability to pay such compensation, but willfully,
26 knowingly, recklessly, and/or intentionally failed to do so.

27 31. Plaintiff and Aggrieved Employees they seek to represent are covered by, and
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Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

32. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

33. On February 18, 2021 Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

34. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

35. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-203, 226, 226.3, 226.7, 510, 558, 512, 1174, 1174.5, 1175, 1194, and, 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

36. At all times relevant, Plaintiff and all other aggrieved employees regularly performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and rest break requirements of the applicable IWC wage order and the Labor Code.

37. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay

1 overtime wages owed as discussed above. Upon information and belief, Defendants failed to
2 incorporate all forms of compensation, including without limitation differentials, bonuses and
3 incentives, into the regular rate for overtime purposes.

4 38. Plaintiff, and on information and belief, all aggrieved employees, were
5 systematically not permitted or authorized to take ten minute rest periods for every four hours
6 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
7 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
8 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
9 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
10 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
11 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
12 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
13 applicable IWC Wage Order.

14 39. Defendants also willfully violated Labor Code sections 201-203 by failing to
15 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
16 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
17 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
18 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
19 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
20 The penalty cannot exceed 30 days of wages.

21 40. Plaintiff and all other aggrieved employees who were separated from employment
22 are entitled to compensation for all forms of wages earned, including but not limited to
23 compensation of overtime wages, and for rest period premiums for non-compliant rest period, but
24 to date have not received such compensation, therefore entitling them to penalties under PAGA
25 for violations of Labor Code sections 201-203.

26 41. On information and belief, Defendants willfully failed to pay all wages due and
27 owing upon separation from employment. These wages include regular and overtime wages and
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1 rest period premiums.

2 42. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
3 statements all deductions from payment of wages and to accurately report total hours worked by
4 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
5 things. Defendants have knowingly and intentionally failed to comply with Labor Code section
6 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

7 43. Labor Code section 1174 of the California also requires Defendants to maintain and
8 preserve, in a centralized location, among other items, records showing the names and addresses
9 of all employees employed and payroll records showing the hours worked daily by, and the wages
10 paid to, its employees. On information and belief and based thereon, Defendants have knowingly
11 and intentionally failed to comply with Labor Code section 1174, including by implementing the
12 policies and procedures and committing the violations alleged in the preceding causes of action
13 and herein. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to
14 Labor Code section 1175.

15 44. On information and belief, Defendants have failed to record all or some of the
16 items delineated in Industrial Wage Orders and Labor Code §226, including premiums due and
17 owing for rest period violations, gross pay and net pay figures, and applicable rates for overtime,
18 sick pay, and other rates of pay from Plaintiff and the Class Members' wage statements.

19 45. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
20 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
21 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
22 for each violation in a subsequent citation, for which the employer fails to provide the employee a
23 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

24 46. Additionally, Defendants have no accurate records relating to aggrieved
25 employees' work periods, , total daily hours worked, total hours worked per payroll period and
26 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate
27 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.
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47. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

48. Plaintiff and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs sunder Labor Code section 2698, *et. seq.*

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: February 18, 2021

JAMES HAWKINS APLC

By:

JAMES R. HAWKINS, ESQ. GREGORY MAURO, ESQ. MICHAEL CALVO, ESQ. Attorneys for Plaintiff LEOVARDO HERNANDEZ individually and on behalf of the general public as private attorney general	
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