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JAVIER ACOSTA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAVIER ACOSTA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

GOLD POINT TRANSPORTATION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: **21STCV17457**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Javier Acosta (“Plaintiff”), on behalf of himself and all aggrieved employees, hereby
2 brings this Representative Action Complaint (“Complaint”) against GOLD POINT
3 TRANSPORTATION, INC., a California corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all aggrieved employees, hereby brings this
7 representative action for recovery of civil penalties under California Labor Code Private Attorneys
8 General Act of 2004 (“PAGA”), Cal. Labor Code § 2698 *et seq.* This Court has jurisdiction over
9 Defendants’ violations of the California Labor Code because the amount in controversy exceeds this
10 Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue as to each Defendant is proper in this judicial district pursuant to Cal. Code of
13 Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
14 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
15 agent(s) within the County of Los Angeles, and/or otherwise are found within the County of Los
16 Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the one year immediately preceding
20 Plaintiff giving the required notice under the PAGA, and within the statute of limitations periods
21 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
22 employee.

23 4. Plaintiff is informed and believes, and based thereon alleges, that during the one-year
24 preceding Plaintiff giving the required notice under the PAGA, and continuing to the present,
25 Defendants did (and continue to do) business by being one of the leading drayage carriers (transporter
26 of goods in the shipping and logistics industry) within Southern California. Established in 1996, they
27 have been providing service from the Port of Long Beach and Port of Los Angeles and rails with over
28 240 trucks/drivers to their customers. Their services areas include all of California, Nevada, Arizona

1 and Utah as well as border crossing services into Mexico. Defendants employed Plaintiff and other,
2 non-exempt employees within, among other counties, Los Angeles County and the state of California
3 and, therefore, were (and are) doing business in Los Angeles County and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
5 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
7 this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is
8 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
9 individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged
10 herein, and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
11 employment practices, wrongs, injuries and damages complained of herein.

12 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

14 7. At all times herein mentioned, each of said Defendants participated in the doing of the
15 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
16 and each of them, were the agents, servants, and employees of each and every one of the other
17 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
18 within the course and scope of said agency and employment. Defendants, and each of them, approved
19 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
20 herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of and
22 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
23 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
24 that all Defendants were joint employers for all purposes of Plaintiff and all other aggrieved employees.

25 **GENERAL FACTUAL ALLEGATIONS**

26 9. Plaintiff, a current employee, has been employed by Defendants from approximately
27 April 2018 through the present. During his employment, Plaintiff has been a truck driver performing
28 various job duties, including without limitation, transporting general commodities, containers, chassis,

1 and/or trailers. During Plaintiff's employment, Defendants have unlawfully and willfully misclassified
2 Plaintiff and other drivers as independent contractors. Thus, Defendants willfully and wrongfully
3 denied Plaintiff and the other aggrieved drivers of their rights to the protections afforded to employees
4 under the California Labor Code and applicable Wage Order of the Industrial Welfare Commission.
5 Indeed, Plaintiff is informed and believes, and based thereon alleges, that, during all relevant times
6 herein mentioned, Defendants knew or should have known that it had a duty to properly classify
7 Plaintiff and other drivers as employees, and properly compensate them, and that Defendants had the
8 financial ability to do so and pay such compensation, but willfully, knowingly, and intentionally failed
9 to do so in order to increase their profits.

10 10. Plaintiff and the other aggrieved drivers provide trucking/delivery services which are
11 directly part of Defendants' regular business as a transportation/delivery company. The services they
12 provide to Defendants are the kind of work typically done by an employee under the direction of an
13 employer. Defendants maintain the trucks and center of operations at its yard in Wilmington,
14 California, which serves as the base of operations for Plaintiff and the other aggrieved drivers.

15 11. In connection with their employment with Defendants, Plaintiff and the other aggrieved
16 drivers would be required to drive to Defendants' yard in Wilmington, California every morning in
17 their personal vehicles to then gain access to the trucks that Defendants required them to purchase and
18 use to perform their job duties. After performing his duties for a particular shift, Plaintiff would then
19 be required to return the truck back to Defendants' yard every evening. Indeed, Defendants controlled
20 and directed Plaintiff and the other drivers in connection with the performance of their work, in terms
21 of when and how to pick up their trucks, when and how to pick up and make deliveries, and how to
22 otherwise perform their job duties.

23 12. While unlawfully and willfully misclassified by Defendant as independent contractors,
24 Plaintiff and the other aggrieved employees were/are paid per load on a flat rate. As a result, Plaintiff
25 and the other aggrieved employees were not separately compensated for time spent working on tasks
26 unrelated to paid loads, including, without limitation, time spent on pre- and post-trip truck inspections,
27 time spent fueling the trucks, time spent completing paperwork and time spent maintaining/washing
28 the trucks. As a result, Plaintiff and the other aggrieved employees were not paid at least the minimum

1 wage for all hours worked.

2 13. As a result of Defendants' failure to pay all minimum wages, Defendants maintained
3 inaccurate payroll records and issued inaccurate wage statements to Plaintiff and the other aggrieved
4 employees. Nevertheless, because Defendants misclassified Plaintiff and the other aggrieved
5 employees as independent contractors, they failed to provide Plaintiff with any accurate wage
6 statements as required by Labor Code section 226.

7 14. Defendants also failed to reimburse Plaintiff for necessary business expenses incurred
8 throughout the relevant time period. Defendants required their drivers who were misclassified as
9 independent contractors, including Plaintiff, to pay for, among other things, expenses related to the
10 purchase of Defendants' trucks, insurance fees/costs, equipment repair costs, maintenance, unloaded
11 mileage, tolls, licensing, fuel and taxes. Despite these requirements, Defendants did not reimburse
12 Plaintiff for incurring these necessary business expenses in violation of California law.

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

15 **(AGAINST ALL DEFENDANTS)**

16 15. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully
17 set forth herein.

18 16. Defendants have committed several Labor Code violations against Plaintiff and other
19 aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et*
20 *seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action
21 against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and
22 the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f)
23 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee
24 and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code §
25 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00
26 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3
27 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent
28 violation pursuant to Labor Code § 558 per employee per pay period; (4) \$5,000 to up to \$25,000 for

each violation of engaging in a pattern and practice of willfully misclassifying employees as independent contractors pursuant to Labor Code section 226.8; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a) Defendants violated Labor Code §226.8 by engaging in, and continuing to engage in, an unlawful practice of avoiding employee status for the aggrieved employees by voluntarily, knowingly and willfully misclassifying those individuals as independent contractors;
- b) Defendants violated Labor Code §226.8 by engaging, and continuing to engage in, an unlawful pattern and practice of charging unlawful fees and making unlawful deductions from the aggrieved employees' compensation, after voluntarily, knowingly and willfully misclassifying those individuals as independent contractors;
- c) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- d) Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- e) Defendants violated Labor Code §§ 204 and 210 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month;
- f) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and
- g) Defendants violated Labor Code §§ 2802 by failing to reimburse Plaintiff and other aggrieved employees for all necessary expenditures incurred.

17. On March 4, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 16 (a)-(g). Now that at least sixty-five days have passed from Plaintiff notifying

Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

18. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (4) \$5,000 to up to \$25,000 for each violation of engaging in a pattern and practice of willfully misclassifying employees as independent contractors pursuant to Labor Code section 226.8; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 16 (a)-(g) above.

2. Upon the First Cause of Action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

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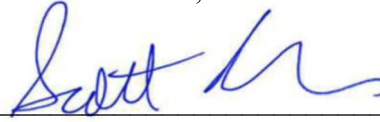
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1 3. For such other and further relief the Court may deem just and proper.

2
3 Dated: May 10, 2021

Respectfully submitted,
LIDMAN LAW, APC

4
5 By:



6 Scott M. Lidman
7 Elizabeth Nguyen
8 Attorneys for Plaintiff
9 JAVIER ACOSTA