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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

MIGUEL ALARCON, individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

CT COMMODITIES, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Assigned to Judicial Officer David C. Mathias

For All Purposes

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

JUL 26 2021

STEPHANIE CAMERON, CLERK
BY NICOLE RENTERIA

Case No.:

288012

**CLASS ACTION COMPLAINT FOR
DAMAGES & ENFORCEMENT UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT, CALIFORNIA LABOR CODE
§ 2698, ET SEQ.**

- (1) Violation of California Labor Code
§§ 226(a) and 226.2 (Non-
Compliant Wage Statements);
- (2) Violation of California Business &
Professions Code §§ 17200, et seq.
- (3) Violation of California Labor Code
§ 2698, et seq. (California Labor
Code Private Attorneys General
Act of 2004)

DEMAND FOR JURY TRIAL

CASE MANAGEMENT CONFERENCE

Hearing Date: 11-29-2021

Time: 8:30

Department: 1

COMES NOW, Plaintiff MIGUEL ALARCON (“Plaintiff”), individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, 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 California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Tulare. The majority of acts and omissions alleged herein relating to Plaintiff and the other class members took place in the State of California, including the County of Tulare. At all relevant times, Defendant maintained its headquarters/“nerve center” within the State of California, County of Tulare.

PARTIES

5. Plaintiff MIGUEL ALARCON is an individual residing in the State of California.

6. Defendant CT COMMODITIES, INC., at all times herein mentioned, was and is, upon information and belief, a California corporation, and at all times herein mentioned, an

1 employer whose employees are engaged throughout the State of California, including the
2 County of Tulare.

3 7. At all relevant times, Defendant CT COMMODITIES, INC. was the “employer”
4 of Plaintiff within the meaning of all applicable California laws and statutes.

5 8. At all times herein relevant, Defendants CT COMMODITIES, INC. and DOES 1
6 through 100, and each of them, were the agents, partners, joint venturers, joint employers,
7 representatives, servants, employees, successors-in-interest, co-conspirators and/or assigns,
8 each of the other, and at all times relevant hereto were acting within the course and scope of
9 their authority as such agents, partners, joint venturers, joint employers, representatives,
10 servants, employees, successors, co-conspirators and/or assigns, and all acts or omissions
11 alleged herein were duly committed with the ratification, knowledge, permission,
12 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

13 9. The true names and capacities, whether corporate, associate, individual or
14 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
15 said defendants by such fictitious names. Plaintiff is informed and believes, and based on that
16 information and belief alleges, that each of the defendants designated as a DOE is legally
17 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
18 the injuries and damages to Plaintiff and the other class members as alleged in this Complaint.
19 Plaintiff will seek leave of court to amend this Complaint to show the true names and
20 capacities when the same have been ascertained.

21 10. Defendant CT COMMODITIES, INC. and DOES 1 through 100 will hereinafter
22 collectively be referred to as “Defendants.”

23 11. Plaintiff further alleges that Defendants, directly or indirectly controlled or
24 affected the working conditions, wages, working hours, and conditions of employment of
25 Plaintiff and the other class members and aggrieved employees so as to make each of said
26 Defendants employers and employers liable under the statutory provisions set forth herein.

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CLASS ACTION ALLEGATIONS

12. Plaintiff brings this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

13. The proposed class is defined as follows:

All current and former piece-rate or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint to final judgment and who reside in California.

14. Plaintiff reserves the right to establish subclasses as appropriate.

15. The class is ascertainable and there is a well-defined community of interest in the litigation:

a. Numerosity: The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

b. Typicality: Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom he has a well-defined community of interest.

c. Adequacy: Plaintiff will fairly and adequately protect the interests of each class member, with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and during the pendency of this action will continue to incur,

costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

- d. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual joinder of all class members is impractical.
- e. Public Policy Considerations: Certification of this lawsuit as a class action will advance public policy objectives. Employers of this great state violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. However, class actions provide the class members who are not named in the complaint anonymity that allows for the vindication of their rights.

16. There are common questions of law and fact as to the class members that predominate over questions affecting only individual members. The following common questions of law or fact, among others, exist as to the members of the class:

- a. Whether Defendants complied with wage reporting as required by the California Labor Code; including, *inter alia*, sections 226 and 226.2;
- b. Whether Defendants' conduct was willful or reckless;
- c. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code section 17200, et seq.;
- d. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and
- e. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

PAGA ALLEGATIONS

17. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

1 18. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for a civil penalty, including unpaid wages and premium
3 wages, to be assessed and collected by the LWDA for violations of the California Labor Code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself and other current or former employees pursuant to procedures outlined in
6 California Labor Code section 2699.3.

7 19. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
8 employee,” who is any person that was employed by the alleged violator and against whom
9 one or more of the alleged violations was committed.

10 20. Plaintiff was employed by Defendants and the alleged violations were
11 committed against him during his time of employment and he is, therefore, an aggrieved
12 employee. Plaintiff and the other employees are “aggrieved employees” as defined by
13 California Labor Code section 2699(c) in that they are current or former employees of
14 Defendants, and one or more of the alleged violations were committed against them.

15 21. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
17 following requirements have been met:

18 a. The aggrieved employee shall give written notice by online submission
19 (hereinafter “Employee's Notice”) to the LWDA and by certified mail to
20 the employer of the specific provisions of the California Labor Code
21 alleged to have been violated, including the facts and theories to support
22 the alleged violations.

23 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar days
26 of the postmark date of the Employee’s Notice. Upon receipt of the
27 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
28 (65) calendar days of the postmark date of the Employee’s Notice, the

aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

22. On April 29, 2021, Plaintiff provided written notice by online submission to the LWDA and by certified mail to Defendant CT COMMODITIES, INC. of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff did not receive an LWDA Notice within sixty-five (65) days of the date of the submission of Plaintiff's Notice.

23. Therefore, the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties, including unpaid wages and premium wages per California Labor Code section 558 against Defendants, in addition to other remedies, for violations of California Labor Code sections 226(a) and 226.2 have been satisfied.

GENERAL ALLEGATIONS

24. At all relevant times set forth herein, Defendants employed Plaintiff and other persons as piece-rate or non-exempt employees within the State of California, County of Tulare.

25. Defendants, jointly and severally, employed Plaintiff as a piece rate employee, from approximately August 2019 to approximately May 2020, in the State of California, County of Tulare.

26. Defendants hired Plaintiff and the other class members and classified them as piece-rate or non-exempt employees, and failed to provide them with complete and accurate wage statements.

27. Defendants had the authority to hire and terminate Plaintiff and the other class members, to set work rules and conditions governing Plaintiff's and the other class members' employment, and to supervise their daily employment activities.

28. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other class members' employment for them to be joint employers of Plaintiff and the other class members.

29. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members.

30. Defendants continue to employ piece rate or non-exempt employees within the State of California.

31. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a pattern and practice of wage abuse against their piece rate or non-exempt employees within the State of California. This pattern and practice involved, *inter alia*, failing to provide them with complete and accurate wage statements in violation of California law.

32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members were entitled to receive complete and accurate wage statements in accordance with California law, but, in fact, they did not receive complete and accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other class members, the number of piece-rate units earned and any applicable piece rate, and the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

33. During the relevant time period, Defendants failed to provide complete or accurate wage statements to Plaintiff and the other class members.

34. During the relevant time period, Defendants failed to properly compensate Plaintiff and the other class members pursuant to California law in order to increase Defendants' profits.

35. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

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FIRST CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against CT COMMODITIES, INC. and DOES 1 through 100)

36. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 35, and each and every part thereof with the same force and effect as though fully set forth herein.

37. At all material times set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

38. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include, but are not limited to: the failure to include the total number of hours worked by Plaintiff and the other class members.

39. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily-protected rights.

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40. More specifically, Plaintiff and the other class members have been injured by Defendants' intentional and willful violation of California Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate and itemized wage statements pursuant to California Labor Code section 226(a).

41. Plaintiff and the other class members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

42. Plaintiff and the other class members are also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

SECOND CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, et seq.)

(Against CT COMMODITIES, INC. and DOES 1 through 100)

43. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 42, and each and every part thereof with the same force and effect as though fully set forth herein.

44. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

45. Defendants' activities as alleged herein are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code section 17200, et seq.

46. A violation of California Business & Professions Code section 17200, et seq. may be predicated on the violation of any state or federal law. In this instant case, Defendants' failure to provide complete and accurate wage statements violated California Labor Code sections 226(a) and 226.2.

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48. Plaintiff and the other class members have been personally injured by Defendants' unlawful business acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or property.

49. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and the other class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this Complaint; an award of attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other applicable laws; and an award of costs.

THIRD CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, et seq.)

(Against CT COMMODITIES, INC. and DOES 1 through 100)

50. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 49, and each and every part thereof with the same force and effect as though fully set forth herein.

51. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

52. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

53. Plaintiff and the other piece rate or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or
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former employees of Defendants, and one or more of the alleged violations was committed against them.

54. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code sections 226(a) and 226.2 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 226(a) and 226.2.

55. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory and civil penalties against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

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56. Pursuant to California Labor Code section 2699(i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

57. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorney General Act, prays for relief and judgment against Defendants, jointly and severally, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representative of the Class;
3. That counsel for Plaintiff be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code sections 226(a) and 226.2 and applicable IWC
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1 Wage Orders as to Plaintiff and the other class members, and willfully failed to provide
2 accurate and complete itemized wage statements thereto;

3 6. For actual, consequential and incidental losses and damages, according to proof;

4 7. For statutory penalties pursuant to California Labor Code section 226(e);

5 8. For injunctive relief to ensure compliance with this section, pursuant to
6 California Labor Code section 226(h);

7 9. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and
8 (g); and

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

10 **As to the Second Cause of Action**

11 11. That the Court decree, adjudge and decree that Defendants violated California
12 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiff and the
13 other class members with complete and accurate wage statements under Labor Code sections
14 226(a) and 226.2.

15 12. For restitution of unpaid wages to Plaintiff and all the other class members and
16 all pre-judgment interest from the day such amounts were due and payable;

17 13. For the appointment of a receiver to receive, manage and distribute any and all
18 funds disgorged from Defendants and determined to have been wrongfully acquired by
19 Defendants as a result of violation of California Business and Professions Code sections
20 17200, et seq.;

21 14. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Code of Civil Procedure section 1021.5;

23 15. For injunctive relief to ensure compliance with this section, pursuant to
24 California Business and Professions Code sections 17200, et seq.; and

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

26 **As to the Third Cause of Action**

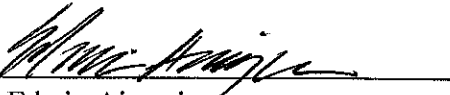
27 17. For civil penalties and wages pursuant to California Labor Code sections
28 2699(a), (f) and (g) and 558 plus costs and attorneys' fees for violation of California Labor

1 Code sections 226(a) and 226.2; and

2 18. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 Dated: July 23, 2021

LAWYERS for JUSTICE, PC

6 By: 
7 Edwin Aiwarzian
8 *Attorneys for Plaintiff*