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County of San Joaquin
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5 Attorneys for Plaintiff ANTHONY WOODS

STK-CV-UOE-2021-0010255

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN JOAQUIN

10 ANTHONY WOODS,

Case No.:

11 Plaintiff,

COMPLAINT FOR PENALTIES FOR

12 vs.

1. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)

13 RJR TRANSPORTATION, INC., and
14 DOES 1-10, inclusive,

15 Defendants.

16
17 Plaintiff Anthony Woods ("Plaintiff") brings this action against RJR Transportation, Inc.,
18 ("RJR") and Does 1-10, inclusive as referred to herein, as a proxy for the California Labor and
19 Workforce Development Agency ("LWDA") under the California Labor Code Private Attorneys
20 General Act of 2004 ("PAGA"). As grounds Plaintiff therefore alleges:

21 **PARTIES**

22 1. Plaintiff is and was at all times relevant herein an individual and a resident of San
23 Joaquin County, California.

24 2. RJR is and was at all times relevant herein a California corporation.

25 3. RJR and Does 1-10 are referred to collectively herein as "Defendants."

26 4. Plaintiff is not aware of the true names and capacities of the defendants sued herein
27 as Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such
28 defendants by these fictitious names. Plaintiff will amend this complaint to allege their true names

1 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
2 each of the fictitiously named defendants is responsible in some manner for the occurrences herein
3 alleged and that the injuries and damages herein alleged were legally caused by such defendants.
4 Unless otherwise indicated, each defendant was acting within the course and scope of said agency
5 and/or employment, with the knowledge and/or consent of said co-defendant.

6 **VENUE**

7 5. Venue is proper in this Court because unlawful acts alleged herein as to Plaintiff,
8 whose employment with Defendants was within San Joaquin County, occurred in San Joaquin
9 County.

10 **GENERAL ALLEGATIONS**

11 6. Plaintiff was employed by Defendants in San Joaquin County in a non-exempt
12 position from October 30, 2019, to March 7, 2021.

13 7. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699(c) because he
14 was employed by Defendants and the following Labor Code violations were committed against
15 him by Defendants:

16 a. Defendants failed to pay Plaintiff in a timely manner, in violation of Labor
17 Code § 204, because they paid him, in accordance with what Defendants
18 have characterized as a “Retro Pay Adjustment,” regular wages more than
19 seven calendar days following the close of the payroll period and overtime
20 wages after the payday for the next regular payroll period. Specifically, on
21 November 5, 2020, Defendants paid Plaintiff for (1) more than 78 regular
22 hours that he had worked in previous payroll periods, including payroll
23 periods that had passed weeks and months prior; (2) more than 4 overtime
24 hours that he had worked more than 2 payroll periods prior; and (3) 1 paid
25 sick time hour that he had worked more than 1 payroll period prior, all in
26 violation of Labor Code § 204;

27 b. As evidenced in the wage statement that Defendants furnished to Plaintiff
28 corresponding to check number 101845, Defendants failed to furnish

1 Plaintiff an accurate itemized statement in writing as a detachable part of the
2 check, draft, or voucher paying his wages showing (1) total hours worked, in
3 violation of Labor Code § 226(a)(2); and (2) all applicable hourly rates in
4 effect during the pay period and the corresponding number of hours worked
5 at each hourly rate, in violation of Labor Code § 226(a)(9);

6 c. As evidenced in in the wage statement that Defendants furnished to Plaintiff
7 corresponding to check number 102627, Defendants failed to furnish
8 Plaintiff an accurate itemized statement in writing as a detachable part of the
9 check, draft, or voucher paying his wages showing the inclusive dates of the
10 period for which Plaintiff was paid, in violation of Labor Code § 226(a)(6).
11 This wage statement inaccurately shows the dates for the prior pay period,
12 “02/08/2021 – 02/21/2021,” instead of the inclusive dates of the period for
13 which Plaintiff was paid with check number 102627;

14 d. As evidenced in the wage statements that Defendants furnished to Plaintiff
15 corresponding to the pay period of February 8 to February 21, 2021,
16 Defendants failed to include a non-discretionary bonus, i.e., the “Employee
17 Safety Incentive,” when determining Plaintiff’s “regular rate of pay” for
18 purposes of calculating Plaintiff’s overtime hourly rate for overtime earned
19 in the same pay period as the bonus, in violation of Labor Code §§ 510, 558,
20 1194, and 1198;

21 e. Also as evidenced in the wage statements that Defendants furnished to
22 Plaintiff corresponding to the pay period of February 8 to February 21, 2021,
23 Defendants failed to include a non-discretionary bonus, i.e., the “Employee
24 Safety Incentive,” when determining Plaintiff’s “regular rate of pay” for
25 purposes of calculating Plaintiff’s paid sick time for sick pay used in the
26 same pay period as the bonus, in violation of Labor Code § 246;

27 f. As evidenced in the wage statement that Defendant furnished to Plaintiff
28 corresponding to the pay period of November 4 to November 17, 2019, and

1 Plaintiff's "RJR UNIFORM ORDER RECEIPT" dated October 31, 2019,
2 Defendants failed to pay the entire cost of a uniform that they required
3 Plaintiff to wear and/or purchase by deducting 50% of the cost of the
4 uniform from his pay, in violation of Labor Code § 2802.

5 8. Within the relevant time period, including within the past year, not including the
6 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
7 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
8 applied to all of their current and former non-exempt California employees, Defendants failed to
9 pay overtime wages at the correct rate to their non-exempt California employees, current and
10 former, including Plaintiff, as detailed above, in violation of Labor Code §§ 510, 558, 1194, and
11 1198. Specifically, Defendants have failed to include non-discretionary bonuses when calculating
12 these individuals' "regular rate of pay" for purposes of overtime. Defendants have failed to include
13 non-discretionary bonuses, including those identified on the wage statements Defendants have
14 furnished to their current and former non-exempt California employees as "Employee Safety
15 Incentive," when calculating the "regular rate of pay" for purposes of overtime earned in the same
16 period as the bonuses, in violation of Labor Code §§ 510, 558, 1194, and 1198. These bonuses are
17 non-discretionary and based on the occurrences, or non-occurrences, of workplace accidents.
18 Nevertheless, Defendants have failed to include these non-discretionary bonuses when calculating
19 the non-exempt California employees' regular rate of pay for purposes of calculating the correct
20 overtime hourly rates for pay periods in which the employees worked overtime hours and also
21 received the non-discretionary bonuses, again, in violation of Labor Code §§ 510, 558, 1194, and
22 1198.

23 9. Also within the relevant time period, including within the past year, not including
24 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
25 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
26 applied to all of their current and former non-exempt California employees, Defendants have failed
27 to pay sick time at the correct rate to their non-exempt California employees, current and former,
28 including Plaintiff, in violation of Labor Code § 246, for the same reasons that they have failed to

1 pay overtime at the correct rates, namely, Defendants’ failure to include non-discretionary bonuses
2 when calculating these individuals’ “regular rate of pay” for purposes of paid sick time.

3 10. Also within the relevant time period, including within the past year, not including
4 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
5 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
6 applied to all of their current and former non-exempt California employees, and as a result,
7 separately, of (1) the overtime-rate and sick-rate violations and/or (2) the so-called “Retro Pay
8 Adjustments” set forth above, Defendants have failed to pay wages in a timely manner, in violation
9 of Labor Code § 204, because they have (1) yet to compensate the non-exempt individuals in
10 California to whom they underpaid overtime and paid sick time, including Plaintiff – because, i.e.,
11 of Defendants’ failure to properly calculate the “regular rate of pay” in regards to overtime and
12 paid sick time – well beyond the deadlines to pay such wages under Labor Code § 204 (i.e., several
13 pay periods have passed since these wages were payable in most instances); and (2) paid regular,
14 overtime, and paid sick time wages as part of their so-called “Retro Pay Adjustments” well beyond
15 the deadlines to pay such wages under Labor Code § 204 (i.e., several pay periods passed between
16 the time most of these wages were earned and when they were actually paid), in violation of Labor
17 Code § 204.

18 11. Also within the relevant time period, including within the past year, not including
19 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
20 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
21 applied to all of their former non-exempt California employees, and as a result, separately, of the
22 (1) overtime-rate and sick-rate violations and (2) the untimely payment of wages associated with
23 the so-called “Retro Pay Adjustments” set forth above, Defendants have failed to pay wages
24 immediately upon termination or within 72 hours of resignation, in violation of Labor Code §§ 201
25 and 202, respectively, to (1) former non-exempt California employees to whom they
26 undercompensated for overtime and/or sick time as a result of the overtime-rate and sick-rate
27 violations set forth above, including Plaintiff, because they did not compensate these former non-
28 exempt California employees for all overtime and paid sick time – because, i.e., of Defendants’

1 failure to properly calculate the “regular rate of pay” in regards to overtime and paid sick time –
2 either immediately at the time of termination, in violation of Labor Code § 201, or within 72 hours
3 of resignation, in violation of Labor Code § 202; and (2) former non-exempt California employees
4 who were terminated or resigned before Defendants paid them the so-called “Retro Pay
5 Adjustments” set forth above, such that Defendants failed to pay these individual these overdue,
6 unpaid wages either immediately at the time of termination, in violation of Labor Code § 201, or
7 within 72 hours of resignation, in violation of Labor Code § 202.

8 12. Also within the relevant time period, including within the past year, not including
9 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
10 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
11 applied to all of their current and former non-exempt California employees, and as a result,
12 separately, of (1) the overtime-rate and sick-rate violations and (2) the untimely payment of wages
13 associated with the so-called “Retro Pay Adjustments” set forth above, Defendants have failed to
14 furnish complete and accurate wage statements to the non-exempt individuals in California to
15 whom they (1) underpaid overtime and paid sick time, including Plaintiff – because, i.e., of
16 Defendants’ failure to properly calculate the “regular rate of pay” in regards to overtime and paid
17 sick time – because the wage statements Defendants furnished as to pay periods in which overtime
18 and/or sick time was paid at the incorrect rate, and to whom they (2) paid regular, overtime, and
19 paid sick time wages as part of their so-called “Retro Pay Adjustments,” because the corresponding
20 wage statements fail to **accurately** show the following information:

- 21 a. **Actual** gross wages earned, in violation of Labor Code § 226(a)(1);
- 22 b. **Actual** total hours worked, in violation of Labor Code § 226(a)(2)
- 23 c. **Actual** net wages earned, in violation of Labor Code § 226(a)(5); and
- 24 d. **Actual** applicable hourly rates in effect during the pay period and the **actual**
25 corresponding number of hours worked at each hourly rate in violation of
26 Labor Code § 226(a)(9).

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28 ///

1 13. Also within the relevant time period, including within the past year, not including
2 the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
3 Related to COVID-19, Emergency Rule 9, and in accordance with a uniform, statewide policy
4 applied to all of their current and former California employees, Defendants have failed to pay the
5 entire cost of uniforms that they have required their current and former California employees,
6 including Plaintiff, to wear and/or purchase by deducting a portion of the cost of the uniforms from
7 their pay, in violation of Labor Code § 2802.

8 **FIRST CAUSE OF ACTION**
9 **VIOLATIONS OF LABOR CODE § 2698 ET SEQ.**
10 **(Private Attorneys General Act)**
11 **Against Defendants**

12 14. Plaintiff hereby realleges and incorporates by reference each and every allegation
13 set forth above as though fully set forth herein.

14 15. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
15 pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”)
16 after the following requirements have been met:

- 17 a. The aggrieved employee shall give written notice by certified mail to the
18 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
19 provisions of the Labor Code alleged to have been violated, including the
20 facts and theories to support the alleged violations;
- 21 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
22 employer and the aggrieved employee by certified mail that it does not
23 intend to investigate the alleged violation within 60 calendar days of the
24 postmark date of the Employee’s Notice. Upon receipt of the LWDA’s
25 Notice, or if the LWDA does not provide notice within 65 calendar days of
26 the postmark date of the Employee’s Notice, the aggrieved employee may
27 commence a civil action pursuant to Labor § 2699 to recover civil penalties
28 in addition to any other penalties to which the employee may be entitled.

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16. Plaintiff provided written notice by online submission to the LWDA, and by certified mail to Defendants, on August 19, 2021, of Defendants' violations of the Labor Code set forth above, i.e., violations of Labor Code § 510, 558, 1194, and 1198 (failure to pay overtime); violations of Labor Code § 246 (failure to pay sick time); violations of Labor Code § 204 (failure to timely pay wages); violations of Labor Code §§ 201, 202, and 203 (failure to timely pay wages upon termination and resignation); violations of Labor Code § 226 (failure to furnish complete and accurate wage statements); and violations of Labor Code § 2802 (failure to indemnify); including the facts and theories to support the alleged violations. As of today's date, more than 65 days have passed without the LWDA providing written notice that it intends to investigate the allegations in the August 19, 2021 notice. Accordingly, Plaintiff has satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties against Defendants under PAGA.

17. Wherefore, Plaintiff requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For penalties including but not limited to those recoverable under Labor Code §§ 204, 226.3, 256, and 2699(f);
2. For a declaration that Plaintiff is an aggrieved employee within the meaning of Labor Code §§ 2699(a) and (c);
3. For a declaration that Defendants have violated Labor Code §§ 201, 202, 203, 204, 226, 246, 510, 558, 1194, 1198, and 2802;
4. For a declaration that Defendants are liable for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 226, 246, 510, 558, 1194, 1198, and 2802;
5. For attorneys' fees and costs including but not limited to those recoverable under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
6. For prejudgment and post-judgment interest; and
7. For such other and further relief as the court deems just and proper.

DATED: November 2, 2021

MAYALL HURLEY P.C.

By



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
ANTHONY WOODS