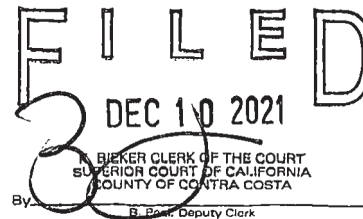


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9



10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF CONTRA COSTA
12

13 KEATON HALL, individually and on behalf of
14 all similarly situated individuals,

15 Plaintiff,

16 v.

17 AMERICAN AUTOMOBILE ASSOCIATION
18 OF NORTHERN CALIFORNIA, NEVADA, and
19 UTAH, DOES 1 to 100,

20 Defendants.
21
22

) CASE NO.: CIVMSC21-02363
)
)

) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT**
)
)

) 1. WAGE AND HOUR VIOLATIONS
) 2. WAITING TIME PENALTIES
) 3. WAGE STATEMENT PENALTIES
) 4. VIOLATION OF THE UNFAIR
) COMPETITION LAW
) 5. PAGA PENALTIES

23 **PRELIMINARY ALLEGATIONS**

24 1. Plaintiff Keaton Hall is a resident of Contra Costa County.

25 2. Defendant American Automobile Association of Northern California, Nevada & Utah.
26 ("AAA") is a corporation that is based in Contra Costa County.

27 3. Plaintiff is unaware of the true names or capacities of Doe defendants 1 to 100 but will
28 amend the complaint pursuant to Code of Civil Procedure section 474 when names are known.

1 4. Plaintiff is informed and believes the acts alleged below were performed by or are
2 attributable to the named and Doe defendants (collectively, "Defendants"), each acting as the
3 other's agent with legal authority to act on the other's behalf.

4 5. Plaintiff is informed and believe each of the Defendants is in some manner responsible for
5 the acts, omissions, occurrences, and transactions alleged. Plaintiff is informed and believe that
6 Defendants are the partners, agents, owners, shareholders, managers or employees of the other and
7 acted on each other's behalf.

8 6. Plaintiff worked for Defendants in a "Tow Service" capacity from December 2, 2019 to
9 July 7, 2021.

10 7. IWC Occupational Wage Order 9 is applicable because Plaintiff and the class members
11 have been employed in the transportation industry.

12 8. Throughout Plaintiff's employment, AAA paid Tow Service employees a combination of an
13 hourly rate and "incentive" bonuses.

14 9. In 2019 and 2018, there were four different bonuses paid out by AAA, which are the
15 following: 1) Efficiency Bonuses paid an additional 0% to 35% of "regular earnings" based on
16 calls answered per day in a given region each pay period; 2) Compliment Incentive Bonuses paid
17 an additional \$10 per month to eligible employees who received positive reviews from clients; 3)
18 an Annual Incentive bonus paid a percentage of "eligible earnings" paid in 2019; and 4) a monthly
19 Club Owned Repair Referral Incentive paid a flat rate per referral of \$5 or \$10 depending on the
20 total number of referrals made per month.

21 10. Throughout his time working for AAA, Plaintiff and the class members worked overtime –
22 that is, hours more than 8 in one workday or more than 40 in a work week.

23 11. Plaintiff and the class members qualified for, and received, these bonuses.

24 12. Nonetheless, in 2021, the incentive plan changed. A monthly "quality" bonus at a flat
25 amount of \$100 was paid per month in which the Tow Service employee had a minimum
26 satisfaction score. Simultaneously, a "productivity" bonus paid on a 5-tier system, where a flat
27 bonus of \$0, \$150, \$300, \$400, \$550, or \$650 was paid in any pay period where a threshold goal
28 was met. Finally, a "member satisfaction bonus" paid out \$200, \$600, or \$1,400 to qualifying

employees during a month.

13. Prior to February 2021, when an employee worked overtime during the same period for which they were also paid for one of the above bonuses, AAA paid overtime adjustments on these bonuses by dividing the bonus by the total hours worked in the period, to arrive at an hourly rate, then multiplied that rate by .05 to find an overtime premium, which was then multiplied by the number of overtime hours worked. This method is referred to as the “FLSA method.”

14. The FLSA method does not satisfy California’s requirements for overtime payment as found in the Industrial Welfare Commission Wage Orders or Labor Code section 510. To properly recalculate overtime wages to account for bonuses in California, employers must divide the bonus by the regular hours worked in the pay period (exclude the overtime hours) to get the hourly rate of that bonus, then multiply the result by 1.5 before multiplying by the number of overtime hours worked. (See *Alvarado v. Dart Container Corp. of California*, (2018) 4 Cal.5th 542, 573.)

15. Even after February 2021, AAA continued to pay overtime premiums on bonus payments incorrectly by continuing to use a .5 multiplier, rather than a 1.5 multiplier.

16. The critical distinction is between flat sum bonuses and production bonuses. If flat sum, it is 1.5x, and only non-overtime hours are used in the calculation of the regular rate. If production based, it is .5x, and all hours, including overtime hours are the divisor in the calculation.

17. Based on AAA’s hybrid approach to bonuses, but AAA’s lack of applying the correct premium to each bonus, this was the foundation of the classwide violation.

18. On October 1, 2021, Plaintiff, through counsel, filed a notification with the Labor and Workforce Development Agency (“LWDA”) via their online portal of Plaintiff’s intention to bring a civil action for penalties under the Labor Code Private Attorney General Act (“PAGA”) on behalf of all Aggrieved Employees. That same day, a copy of the notice was sent to Defendant via certified mail.

19. At least 65 days have passed since notice was provided to the LWDA of Plaintiff’s intention to proceed with this action.

20. To date, Plaintiff has received no notice from the LWDA of their intent or lack of intent to proceed with an investigation or other action in relation to this case.

CLASS ACTION ALLEGATIONS

21. The class consists of the following: "All nonexempt individuals who worked for Defendants from four years before the date of filing through the date of certification who worked overtime hours during the same period for which they received a bonus."

22. Subclass A consists of all members of the class who were terminated or quit prior to the filing of the initial complaint in this action.

23. There is a well-defined community of interest and the class is readily ascertainable.

- a) Numerosity: The members of the class are so numerous that joinder is unfeasible and impractical. The class is estimated to be greater than 1000 individuals and their identities are readily ascertainable with Defendants' employment records.
- b) Typicality: Plaintiff's claims are typical of the class members.
- c) Adequacy: Plaintiff will fairly and adequately protect the interests of the class and understand the obligations of a class representative. Plaintiff's attorneys are versed in the rules governing class action discovery, certification, and settlement.
- d) Superiority: Class action adjudication is superior to other methods. A class action will achieve economies of time, effort and expense compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated for the entire class.
- e) Public Policy Considerations: Employees are often afraid to assert their rights out of fear of retaliation, and also are fearful of bringing actions because they believe employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with anonymity that allows for vindication of their rights while protecting their privacy.

24. There are common questions of law and fact as to the class that predominate over questions affecting only individuals, including but not limited to:

- a) Whether Defendants did not pay correct overtime in violation of Labor Code section 510;
- b) Whether Defendant had a uniform policy of paying out overtime premiums on bonuses based on the total hours worked in a pay period or the total non-overtime hours worked;

- 1 c) Whether Defendant had a uniform policy of paying out overtime premiums on bonuses
2 based on a multiplier of .5 or 1.5;
3 d) Whether waiting time penalties apply;
4 e) Whether Defendant engaged in unfair competition;
5 f) The amount of damages, wages, and penalties owed to Plaintiff and the class.
6

7 **FIRST CAUSE OF ACTION**

8 **WAGE AND HOUR VIOLATIONS**

9 **By Plaintiff and the Class Against All Defendants**

10 25. Plaintiff incorporates by reference paragraphs 1 through 24 of the complaint.

11 26. Defendants did not pay Plaintiff and the members of Class all wages owed, including
12 overtime compensation, in violation of Labor Code section 510.

13 27. As stated above, Defendants failed to pay overtime premiums at the correct rates, as alleged
14 above, with regard to bonuses earned by Plaintiff and the class members.

15 28. Therefore, Plaintiff and the class are entitled to recover for all unpaid wages including
16 overtime, as well as interest, costs, and attorney fees, pursuant to Labor Code Section 1194.
17
18

19 **SECOND CAUSE OF ACTION**

20 **WAITING TIME PENALTIES**

21 **By Plaintiff and Subclass A Against All Defendants**

22 29. Plaintiff incorporates by reference paragraphs 1 through 24 of the complaint.

23 30. Labor Code sections 201 and 202 provide that an employer must pay all wages that are due
24 when the employee stops working for the employer.

25 31. However, Defendants willfully did not pay Plaintiffs and the class members who are no
26 longer employed by Defendants their wages once they stopped working for Defendants.

27 32. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
28 accordance with Labor Code sections 201 et seq., then the wages of the employee continue as a

1 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
2 thirty days.

3 33. Defendant's failure to pay was willful in that Defendants knew wages to be due and payable
4 to Plaintiff and the class members yet failed to pay.

5 34. Based on the above, Plaintiff and the class members are entitled to waiting time penalties.
6

7 **THIRD CAUSE OF ACTION**

8 **WAGE STATEMENT PENALTIES**

9 **By Plaintiff and the Class Against All Defendants**

10 35. Plaintiff incorporates by reference paragraphs 1 to 24 of the complaint.

11 36. Pursuant to Labor Code section 226(a)(9), wage statements must list all hourly rates in
12 effect during the pay period.

13 37. The wage statements were inaccurate since they did not list the correct hourly rates as
14 explained in detail above.

15 38. As a result, Plaintiff and the class are entitled to wage statement penalties, injunctive relief
16 and attorney fees.
17

18 **FOURTH CAUSE OF ACTION**

19 **VIOLATION OF THE UNFAIR COMPETITION LAW**

20 **By Plaintiff and the Class Against All Defendants**

21 39. Plaintiff incorporates by reference paragraphs 1 through 24 of the complaint.

22 40. Pursuant to Business and Professions Code section 17200, unfair competition includes
23 unlawful, unfair, or fraudulent business acts or practices. The unlawful prong applies here.

24 41. Defendants violated Labor Code section 510 as explained in detail above for the wage and
25 hour violations.

26 42. Pursuant to Business and Professions Code section 17203, Plaintiff and the class members
27 are entitled to restitution of all wrongfully withheld wages.

28 ///

1 43. Plaintiffs are entitled to attorney fees under to Code of Civil Procedure section 1021.5.

2
3 **FIFTH CAUSE OF ACTION**

4 **PAGA PENALTIES**

5 **By Plaintiff and the Aggrieved Employees Against All Defendants**

6 44. Plaintiff incorporates by reference paragraphs 1 through 24 of the complaint.

7 45. Defendants failed to pay Plaintiff and the Aggrieved Employees all wages owed from at
8 least February 4, 2021 to the present as required by Labor Code Sections 510 and 1194, as detailed
9 above.

10 46. Plaintiff is therefore entitled to recover on behalf of the Aggrieved Employees and the
11 LWDA \$50 for each initial violation and \$100 for each subsequent violation pursuant to Labor
12 Code Section 558 and the PAGA penalties in Labor Code section 1197.1.

13 47. Additionally, Defendants willfully failed to pay the Aggrieved Employees who have been
14 discharged or quit these amounts within the time allowed by Labor Code Sections 201 and/or 202.

15 48. Since no civil penalty is specifically provided for violating Labor Code Section 201 or 202
16 within those sections or elsewhere in the Labor Code, Plaintiff is entitled to recover on behalf of
17 the Aggrieved Employees and the LWDA \$100 for each initial violation and \$200 for each
18 subsequent violation pursuant to Labor Code Section 2699 subdivision (f)(2).

19 49. PAGA penalties for the wage statement violations are contained in Labor Codes 226.3 and
20 2699.

21 50. Plaintiff is entitled to recover reasonable attorney fees and costs pursuant to Labor Code
22 Section 2699 subdivision (g)(1).

23
24 **PRAYER**

25 WHEREFORE, Plaintiff prays for the following:

26 Class Action

27 1. Class certification

28 2. Plaintiff's appointment as class representative

1 3. Plaintiff's attorneys are appointed as class counsel

2

3 First Cause of Action

4 1. Payment of unpaid wages including overtime compensation and interest

5 2. Attorney fees and costs

6 3. Other relief the court deems proper

7

8 Second Cause of Action

9 1. Waiting time penalties for Plaintiff and the class

10 2. Other relief the court deems proper

11

12 Third Cause of Action

13 1. Wage statement penalties

14 2. Injunctive relief

15 3. Attorney fees and costs

16 4. Other relief the court deems proper

17

18 Fourth Cause of Action

19 1. Restitution of all wrongfully withheld wages including overtime pay

20 2. Attorney fees under Code of Civil Procedure section 1021.5

21 3. Other relief the court deems proper

22

23 Fifth Cause of Action

24 1. Civil penalties pursuant to PAGA

25 2. Attorney fees and costs

26 3. Other relief the court deems proper

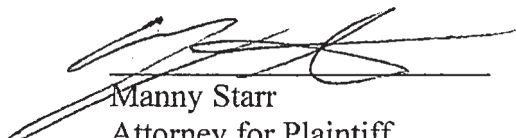
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Date: December 8, 2021

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Attorney for Plaintiff
Keaton Hall