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Attorneys for Plaintiff Aishah Randall, on behalf of herself
and all other aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

AISHAH RANDALL, on behalf of herself
and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

YRC INC. dba YRC FREIGHT, a Delaware
Corporation; YELLOW CORPORATION
f.k.a. YRC WORLDWIDE INC, a Delaware
Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 11 2022

BY 
NATHANIEL JOHNSON, DEPUTY

Case No. **CIV SB 2205968**

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

- 1. PAGA CIVIL PENALTIES FOR FAILURE
TO PAY OVERTIME WAGES**
- 2. PAGA CIVIL PENALTIES FOR FAILURE
TO PROVIDE MEAL PERIODS**
- 3. PAGA CIVIL PENALTIES FOR FAILURE
TO AUTHORIZE AND PERMIT PAID
REST PERIODS**
- 4. PAGA CIVIL PENALTIES FOR FAILURE
TO PROVIDE ACCURATE ITEMIZED
WAGE STATEMENTS**
- 5. PAGA CIVIL PENALTIES FOR FAILURE
TO TIMELY PAY WAGES DUE DURING
AND AT SEPARATION FROM
EMPLOYMENT**
- 6. PAGA CIVIL PENALTIES FOR FAILURE
TO MAINTAIN ACCURATE RECORDS**

NATURE OF CLAIM **CIV SB 2205968**

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2 1. Plaintiff AISHAH RANDALL (“Plaintiff”) brings this representative action
3 under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*,
4 on behalf of herself and all other aggrieved employees against Defendants YRC INC., doing
5 business as YRC FREIGHT, a Delaware Corporation; YELLOW CORPORATION, formerly
6 known as YRC WORLDWIDE INC., a Delaware Corporation; and Does 1 through 10
7 (collectively, “Defendants”) for Defendants’ failure to: pay correctly-calculated overtime
8 wages for all time worked or subject to Defendants’ control; provide meal and rest periods;
9 provide compliant wage statements; timely pay wages due during and upon separation from
10 employment; and maintain accurate records.

11 2. Plaintiff gave written notice of these claims to the California Labor and
12 Workforce Development Agency (“LWDA”) on January 7, 2022 per Labor Code section
13 2699.3, and there has been no LWDA intervention within 65 days of this notice. Plaintiff seeks
14 civil penalties under the PAGA as a representative of the State of California and has standing as
15 an aggrieved non-exempt employee. Plaintiff seeks to represent all current and former non-
16 exempt employees of Defendants, including all City Dispatch Supervisors, who suffered one or
17 more of the violations alleged (“aggrieved employees”) during the “PAGA Period” (one year
18 and 65 days before this complaint filing date until the start of trial). Labor Code §§ 2698, *et*
19 *seq.*, 2699.3(a)(2)(C).

PARTIES

20
21 3. Plaintiff AISHAH RANDALL is a resident of Riverside County, California.
22 Plaintiff worked at Defendants’ 18298 Slover Ave., Bloomington, CA 92316 location, within
23 San Bernardino County, California. From August 20, 2020 through late-September 2020,
24 Plaintiff worked in a part-time, non-exempt position handling “man power” and making sure
25 there were enough workers for each shift. In late-September 2020, Plaintiff accepted the job
26 position of City Dispatch Supervisor, which was classified as exempt, and from which she
27 resigned on approximately January 6, 2021. Plaintiff received her final pay and wage statement
28 on January 12, 2021.

1 10. No federal jurisdiction exists to remove this action to federal court. No federal
2 question is at issue, as the issues are based solely on California law, including the Labor Code,
3 IWC Wage Orders, Code of Civil Procedure, and Business and Professions Code. Further, as a
4 representative action under the PAGA, the matter is not subject to removal under 28 U.S.C.
5 sections 1332(a)-(d) as PAGA civil penalty actions are not subject to federal jurisdiction.

6 **FACTUAL ALLEGATIONS**

7 11. During the PAGA Period, Plaintiff and other aggrieved employees were
8 employed by Defendants in California, and Defendants conducted business in California.

9 12. During the PAGA Period, Plaintiff and other aggrieved employees worked
10 under the same policies, practices, and procedures promulgated by Defendants relating to their
11 employment.

12 13. During the PAGA Period, Defendants misclassified Plaintiff and other aggrieved
13 employees as exempt from California's overtime pay and meal and rest period requirements,
14 which resulted in Defendants' failure to provide overtime wages, compliant meal and rest
15 periods or compensation in lieu thereof, accurate wage statements, and timely and complete
16 final pay. Plaintiff and each aggrieved employee were misclassified as exempt because they did
17 not qualify for any exemption under California law, including the Executive, Administrative,
18 and Professional Exemptions. For instance, Plaintiff and other aggrieved employees were not
19 and are not primarily engaged in duties which meet the tests for these exemptions.

20 14. The California Labor Code and applicable IWC Wage Order(s) provide that all
21 persons employed in the State of California shall be (1) presumed to be an hourly or non-
22 exempt employee; (2) that all "hours worked" and subject to the control of the employer,
23 whether exercised or not, are to be paid at least the minimum wage as determined by the State
24 of California, and for overtime wages at either 1.5 times the regular rate of pay when "hours
25 worked" exceed eight (8) hours in a single day or shift, or forty (40) hours in a workweek.
26 Labor Code sections 1194, *et seq.* provide that notwithstanding any agreement to work for a
27 lesser wage, an employee receiving less than the legal overtime or minimum wage
28 compensation is entitled to recover in a civil action the unpaid balance of their owed

1 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

2 15. During the PAGA Period, Plaintiff and other aggrieved employees worked in
3 excess of the maximum regular rate hours set by the IWC in the applicable Wage Order(s) or
4 statutes, entitling them to overtime compensation. Despite this, Defendants had a consistent
5 policy of paying Plaintiff and other aggrieved employees a fixed salary regardless of the
6 number of hours they worked and of failing to pay them overtime compensation for hours
7 worked in excess of eight (8) per day or forty (40) per week.

8 16. During the PAGA Period, Defendants had a consistent policy which did not
9 provide Plaintiff and other aggrieved employees with duty-free meal periods of at least thirty
10 (30) minutes for shifts of five hours or more, which began before the end of the fifth hour of
11 work, and failed to pay such employees one (1) hour of pay at their regular rate of
12 compensation for each workday a meal period was not authorized or permitted, as required by
13 California wage and hour laws. Plaintiff and other aggrieved employees worked shifts of more
14 than 10 hours per day and were not provided with a second off-duty meal period of 30 minutes
15 for each shift of more than 10 hours, which began before the end of the tenth hour of work. On
16 information and belief, Plaintiff and other aggrieved employees did not waive their right to
17 receive meal periods, including their right to a second meal period on eligible workdays.
18 Defendants did not provide Plaintiff and other aggrieved employees with any written meal
19 period policy.

20 17. Defendants had a consistent policy which did not authorize or permit Plaintiff
21 and other aggrieved employees to receive duty-free rest periods of at least ten (10) minutes per
22 four (4) hours, or major fraction thereof, worked, and failed to pay such employees one (1)
23 hour of pay at their regular rate of compensation for each workday a rest period was not
24 authorized or permitted, as required by California wage and hour laws. Furthermore, Plaintiff
25 and other aggrieved employees worked shifts of more than 10 hours per day and were not
26 provided with a third duty-free rest period of 10-minutes for each shift of more than 10 hours.
27 Defendants did not provide Plaintiff and other aggrieved employees with any written rest
28 period policy.

18. Defendants knowingly and willfully failed to provide accurate itemized wage statements to Plaintiff and other aggrieved employees, which did not include, among other things, the total hours worked nor the hourly rates of pay earned and the corresponding number of hours worked at each rate. Additionally, because Defendants failed to compensate Plaintiff and other aggrieved employees for overtime hours worked and for any non-compliant meal or rest periods, the itemized wage statements provided by Defendants to Plaintiff and other aggrieved employees were inaccurate. As a result, the wage statements that Defendants furnished to Plaintiff and other aggrieved employees were incomplete and inaccurate and fail to comply with the requirements of Labor Code section 226(a).

19. Defendants had a consistent policy of failing to pay Plaintiff and other aggrieved employees all wages due upon separation, in violation of California wage and hour laws. Defendants had a consistent policy of not paying final wages immediately to fired employees and within 72 hours to employees who voluntarily quit. Rather, Defendants paid final wages at the time of employees' next regularly scheduled paydays. For instance, Plaintiff quit on January 6, 2021, but did not receive her final wages until January 12, 2021 in her regularly scheduled paycheck, which was more than 72 hours after she had quit. Further, because Defendants failed to pay all overtime wages and meal and rest period premiums owed during Plaintiff's and other aggrieved employees' employment, final wages paid to Plaintiff and other aggrieved employees were underpaid, as they did not include these amounts.

20. During the PAGA Period, Defendants failed to record (and maintain records) reflecting when the employees actually began and ended each work period and meal period, due to their misclassification of employees as exempt.

21. Plaintiff further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other aggrieved employees of Defendants.

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CAUSES OF ACTION

CIV SB 2205968

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Pay Overtime Wages
(By Plaintiff and Aggrieved Employees against Each Defendant)**

22. Plaintiff incorporates the preceding paragraphs of this Complaint.

23. Labor Code sections 510 and 1194 require employers to pay overtime wages for hours worked over eight per day or forty per week at one and one-half times the employee's regular rate of pay, and double-time wages for hours worked over twelve in one day or for the first eight hours of work on the seventh consecutive day of work at two times the employee's regular rate of pay.

24. Labor Code § 2699(a) provides: "[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

25. Labor Code § 2699(f)(2) provides: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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."

26. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510 and 1194 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5

27. Defendants failed to pay overtime wages for hours worked in excess of eight (8) in one day or forty (40) in one week. By failing to pay overtime wages at the correct rate, Defendants violated Labor Code sections 510 and 1194, and section 3 of applicable IWC Wage Order(s).

28. Plaintiff will seek \$100 for the initial pay period an employee was underpaid,

1 and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with
 2 the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of
 3 California. The amount of the applicable penalty will be proven at trial.

4 SECOND CAUSE OF ACTION

5 **PAGA Civil Penalties for Failure to Provide Required Meal Periods** 6 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

29. Plaintiff incorporates the preceding paragraphs of this Complaint.

30. Labor Code section 512(a) provides in pertinent part: "An employer shall not
 8 employ an employee for a work period of more than five hours per day without providing the
 9 employee with a meal period of not less than 30 minutes. . . An employer shall not employ an
 10 employee for a work period of more than 10 hours per day without providing the employee
 11 with a second meal period of not less than 30 minutes. . . ." The Meal Period section of the
 12 applicable Wage Order provides in pertinent part: "Unless the employee is relieved of all duty
 13 during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period
 14 and counted as time worked...." IWC Wage Order(s), § 11(C). If an employer fails to provide
 15 an employee a meal period in accordance with California law, the employer must pay the
 16 employee one hour of pay at the employee's regular rate for each work day a meal period is not
 17 provided. IWC Wage Order(s), § 11(D); Lab. Code § 226.7(c).

31. By failing to: provide duty-free uninterrupted meal periods of at least thirty (30)
 19 minutes for shifts of five hours or more, which began before the end of the fifth hour of work;
 20 provide second duty-free uninterrupted meal periods of at least thirty (30) minutes for shifts of
 21 ten hours or more, which began before the tenth hour of work; and pay premium wages of one
 22 (1) hour of pay at employees' regular rate of compensation for each workday a meal period was
 23 not provided, Defendants willfully violated the provisions of Labor Code sections 226.7 and
 24 512 and the "Meal Periods" section of the applicable IWC Wage Order as to Plaintiff and other
 25 aggrieved employees.

32. Plaintiff will seek penalties of \$100 for the initial pay period an employee was
 27 underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered
 28 will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to

the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

THIRD CAUSE OF ACTION

PAGA Civil Penalties for Failure to Authorize and Permit Paid Rest Periods (By Plaintiff and Aggrieved Employees Against Each Defendant)

33. Plaintiff incorporates the preceding paragraphs of this Complaint.

34. The Rest Period section of the applicable Wage Order provides: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." IWC Wage Order(s), § 12(A). A first rest period must be authorized and permitted when 3.5 hours are worked, a second when 6 hours are worked, and a third when 10 hours are worked.

35. "Employees forced to remain on call during a 10-minute rest period must fulfill certain duties: carrying a device or otherwise making arrangements so the employer can reach the employee during a break, responding when the employer seeks contact with the employee, and performing other work if the employer so requests. These obligations are irreconcilable with employees' retention of freedom to use rest periods for their own purposes." *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) (citing *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586).

36. "The conclusion that on-call rest periods are impermissible is not only the most logical in light of our construction of Wage Order 4, subdivision 12(A), but is the most consistent with the protective purpose of the Labor Code and wage orders...A different result would undermine the rationale underlying the provision of rest periods during the workday." *Augustus v. ABM Sec. Servs., Inc.*, *supra*, at 2 Cal. 5th at pp. 270-271. Wage Order 4, subdivision 12(A) is identical to Wage Order 1, subdivision 12(A).

37. If an employer fails to provide an employee a rest period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day a rest period is not provided. IWC Wage Order(s), § 12(B); Lab. Code §

226.7(c).

38. By failing to authorize and permit Plaintiff and other aggrieved employees a paid rest period of at least 10 minutes for every four hours or major fraction worked per day, and by failing to provide premium wages at the regular rate of pay when not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and the "Rest Periods" section of the applicable IWC Wage Order.

39. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

FOURTH CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Wage Statements
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

40. Plaintiff incorporates the preceding paragraphs of this Complaint.

41. California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "total hours worked by the employee," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Labor Code §§ 226(a)(1), (2), (5), (9).

42. By failing to provide accurate itemized wage statements showing total number of hours worked and the hourly rates of pay and the corresponding number of hours worked at each rate, Defendants intentionally and willfully violated Labor Code section 226. Further, because Defendants failed to compensate Plaintiff and other aggrieved employees for overtime hours worked and for any non-compliant meal or rest periods, the itemized wage statements provided by Defendants to Plaintiff and other aggrieved employees were inaccurate

43. Labor Code section 226.3 provides for civil penalties for violations of Section 226.

44. Plaintiff will seek civil penalties of \$250 for the initial violation and \$1,000 for

each subsequent violation. Labor Code § 226.3. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

FIFTH CAUSE OF ACTION

Failure to Timely Pay Wages Due During and at Separation from Employment (By Plaintiff and Aggrieved Employees Against Each Defendant)

45. Plaintiff incorporates the preceding paragraphs of this Complaint.

46. An employer must pay “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Labor Code § 204.

47. An employer must pay all wages owed to terminated employees at the time of termination, or within 72 hours to employees who quit. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Cal. Labor Code § 203.

48. By failing to pay Plaintiff and other aggrieved employees all earned overtime wages, Defendants failed to pay these employees all wages due during their employment, in violation of Labor Code section 204. Because Defendants failed to pay these earned wages, Defendants also failed to timely pay all final wages owed to Plaintiff and other aggrieved employees in violation of Labor Code sections 201 and 202. Defendants did not pay waiting time penalties to Plaintiff and other aggrieved employees for each day any portion of their final wages went unpaid, in violation of Labor Code section 203.

49. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation. Labor Code § 2699(f)(2). Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

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SIXTH CAUSE OF ACTION CIV SB 2205968
PAGA Civil Penalties for Failure to Maintain Accurate Records
(By Plaintiff and Aggrieved Employees Against Each Defendant)

50. Plaintiff incorporates the preceding paragraphs of this Complaint.

51. An employer must maintain payroll records showing hours worked daily by, and wages paid to, its employees, in accordance with rules established by the Industrial Welfare Commission. Labor Code § 1174. An employer must also maintain time records showing when each work period, and meal period, begins and ends. IWC Wage Order(s), § 7.

52. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain records required by Section 1174(d).

53. By failing to maintain accurate records of when the employees began and ended each work period and meal period, Defendants violated Labor Code section 1174.

54. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2) and/or penalties provided for in Labor Code § 1174.5. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of herself and other aggrieved employees against Defendants:

1. That this action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

2. For recovery of all civil penalties as permitted by Labor Code section 2699, for unpaid overtime wages owed pursuant to Labor Code sections 204, 510, and 1194, according to proof;

3. For recovery of civil penalties as permitted by Labor Code section 2699, for unpaid meal period premiums pursuant to Labor Code section 226.7, according to proof;

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4. For recovery of civil penalties as permitted by Labor Code section 2699 for unpaid rest period premiums pursuant to Labor Code section 226.7, according to proof;

5. For recovery of civil penalties as permitted by Labor Code section 2699, for inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

6. For recovery of civil penalties as permitted by Labor Code section 2699, for failing to timely pay all wages owed upon separation from employment pursuant to Labor Code sections 201-203, according to proof;

7. For recovery of civil penalties as permitted by Labor Code section 2699 and/or 1174.5, for failing to maintain accurate records pursuant to Labor Code section 1174, according to proof;

8. For all civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, pursuant to Labor Code section 2699(i);

9. For the Plaintiff to be recognized as a Representative of the LWDA and an "aggrieved employee," and that she be awarded enhanced compensation for bringing this action should she prevail and provide benefit to California or other "aggrieved employees";

10. For recovery of reasonable attorneys' fees and costs, as specifically permitted by Labor Code Section 2699(g), or alternatively as permitted as a private enforcement action seeking public redress for fees and costs as permitted by California Code of Civil Procedure section 1021.5; and

11. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
DAVTYAN LAW FIRM, INC.

Dated: March 14, 2022

By: _____

Michael D. Singer, Esq.

Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Aishah Randall, on behalf of
herself and all other aggrieved employees