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on behalf of herself and all others similarly situated and aggrieved

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

VICTORIA VAN TASSEL, on behalf of
herself and all others similarly situated and
aggrieved,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., an
Ohio Corporation; and DOES 1 Through 10,
inclusive,

Defendants.

Case No. 37-2022-00013716-CU-OE-CTL

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**SECOND AMENDED CLASS ACTION
COMPLAINT**

**1. BREACH OF CONTRACT FOR FAILURE
TO PAY PROMISED BONUS WAGES**

**2. PAGA CIVIL PENALTIES FOR BREACH
OF CONTRACT FOR FAILURE TO PAY
PROMISED BONUS WAGES**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/12/2022 at 10:45:00 AM

Clerk of the Superior Court
By Treva Cutts, Deputy Clerk

I.

NATURE OF CLAIM

1. Plaintiff VICTORIA VAN TASSEL (“Plaintiff”) brings this action on behalf of herself and a proposed Class of all California UPS personal vehicle drivers (“PVDs”) employed by Defendant UNITED PARCEL SERVICE, INC. (“UPS”) and Does 1 through 10 (collectively, “Defendants”) at any time from two years before the filing of this Complaint through the date of trial (“Class Period”) for Defendants’ failure to pay promised bonus wages.

2. Plaintiff, on behalf of herself and all Class Members, brings this action pursuant to Labor Code section 200, California Code of Civil Procedure section 339, and California common law, seeking unpaid bonus wages, reasonable attorneys’ fees and costs, and any other relief this Court deems proper.

3. Plaintiff also brings this lawsuit as a Representative Action under California’s Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of the state of California, and aggrieved current and former employees. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks to recover civil penalties, and reasonable attorney’s fees and costs. Plaintiff, by operation of law, has standing and capacity to sue as a representative of the State of California. Plaintiff mailed written notice of the specific provisions of the code that Defendants violated, including the facts and theories to support the alleged violations, to the LWDA and to UPS on April 25, 2022. Defendants did not provide notice of cure and the LWDA did not provide notice of investigation in the 65 days after the April 25, 2022 mailing of the PAGA notice.

4. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all current and former aggrieved employees of Defendants who suffered one or more of the alleged violations (“aggrieved employees”) as described herein during the applicable limitations period, the proposed “PAGA Period” (which is defined as one year and 65 days prior to the commencement on this action until the commencement of trial in the matter).

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II.
PARTIES

5. Plaintiff VICTORIA VAN TASSEL worked for Defendants as a seasonally-employed UPS PVD from approximately October 2021 through December 24, 2021 based out of UPS's San Diego terminal.

6. Defendant UNITED POSTAL SERVICE, INC. ("UPS") is a corporation registered in Ohio. UPS is the world's largest package deliverer and employs over 400,00 employees.

7. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, or parent or subsidiary corporation of UPS, is responsible in some manner for the occurrences and injuries alleged, and that harm suffered by Plaintiff and the proposed Class was proximately caused by them in addition to UPS.

8. Plaintiff is informed, believes, and alleges each Defendant, including each Doe defendant, acted in concert with each and every other Defendant, intended to and did participate in the practices alleged, and was a proximate cause of damage and injury to Plaintiff.

9. At all relevant times each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment.

III.
JURISDICTION AND VENUE

10. Venue as to each Defendant is proper in this judicial district, as UPS is a foreign corporation that has not designated a principal place of business in California. Code of Civil Procedure § 395.5. Defendant employed and continues to employ Plaintiff and similarly-situated employees in San Diego and throughout California.

11. Plaintiff alleges that no federal question is raised as the issues are based solely on California law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and

1 Business and Professions Code, and that the Class Action Fairness Act (“CAFA”), 28 U.S.C.
2 section 1332(d), does not apply, or in the alternative, that exceptions for local case or
3 controversy under the CAFA do apply and prohibit removal of this action to federal court.
4 Plaintiff is also informed and believes that based on her rate of pay, her individual claims do not
5 meet the necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C.
6 section 1332(a) or jurisdiction under the CAFA.

7 12. Further as a representative action under the PAGA, the matter is not subject to
8 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to
9 federal jurisdiction.

10 **IV.**

11 **CLASS ACTION ALLEGATIONS**

12 13. Plaintiff seeks to represent Classes defined as:

13 **Class**

14 All California UPS PVDs employed by Defendants at any time from two
15 years before the filing of this Complaint through the date of trial (“Class
Period”).

16 14. Plaintiff seeks to certify a subclass of employees defined as:

17 **Bonus Wages Subclass**

18 All Class Members who did not receive promised bonuses from
19 Defendants after meeting the preconditions to receive these bonuses.

20 15. Plaintiff reserves the right to amend or modify the Class description, including
21 by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

22 16. **Commonality**: This action has been brought and may be maintained as a class
23 action pursuant to Code of Civil Procedure section 382 because there is a well-defined common
24 interest of many persons and it is impractical to bring them all before the court.

25 17. **Ascertainable Class**: The proposed Class and Subclass are ascertainable
26 because they can be identified and located using Defendants’ payroll and personnel records.

27 18. **Numerosity**: The potential Members of the Class and Subclass as defined are so
28 numerous that joinder of all Members would be unfeasible and impractical. The disposition of
their claims through this class action will benefit the parties and this Court. The number of

Members of the Class and Subclass is unknown to Plaintiff, but is estimated to be in excess of 100 individuals. The number and identity of Class Members can be readily ascertained using Defendants' records.

19. **Typicality**: Plaintiff's claims are typical of Class Members' and Subclass Members' claims because all Members of the Class and Subclass sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

20. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclass, will fairly protect the interests of the Class and Subclass Members and have no interests antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent, skilled, and experienced in litigating large employment law class actions.

21. **Superiority**: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. A Class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this action that precludes its maintenance as a class action.

22. The predominating common questions of law and fact include whether Defendants have a policy or practice of failing to pay promised bonuses.

V.

FACTUAL ALLEGATIONS

23. During the Class and PAGA Periods, Plaintiff and other similarly-situated and aggrieved employees were employed by Defendants in San Diego County and throughout California.

24. During the Class and PAGA Periods, Defendants failed to pay Plaintiff and other similarly-situated and aggrieved employees promised bonus wages. Specifically, Plaintiff and similarly-situated and aggrieved employees were orally promised by Defendants in their training that they would receive a weekly "bonus" for working over forty hours per week and

1 for not being absent. Plaintiff decided to take and keep the job with Defendants in part based on
2 this oral promise. However, Plaintiff and other similarly-situated and aggrieved employees were
3 not paid this weekly “bonus,” nor any wages, for meeting these metrics.

4 **VI.**

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **Breach of Contract for Failure to Pay Promised Bonus Wages**
8 **(By Plaintiff and Each Bonus Wages Subclass Member)**

9 25. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 26. By failing to pay bonus wages to Plaintiff and similarly-situated employees who
11 met the preconditions for receiving the bonus as articulated by Defendants, Defendants
12 breached a contractual promise.

13 27. Defendants’ unlawful acts deprived Plaintiff, the Class, and the Bonus Wages
14 Subclass of bonus wages in amounts to be determined at trial, and they are entitled to recover
15 these wages, interest, attorneys’ fees, and costs.

16 **SECOND CAUSE OF ACTION**

17 **PAGA Civil Penalties for Breach of Contract for Failure to Pay Promised Bonus Wages**
18 **(By Plaintiff and Each Aggrieved Employee)**

19 28. Plaintiff incorporates the preceding paragraphs of this Complaint.

20 29. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
21 law, any provision of this code that provides for a civil penalty to be assessed and collected by
22 the Labor and Workforce Development Agency or any of its departments, divisions,
23 commissions, boards, agencies, or employees, for a violation of this code, may, as an
24 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
25 himself or herself and other current or former employees pursuant to the procedures specified in
26 Section 2699.3”

27 30. Labor Code section 2699(f)(2) states: “For all provisions of this code except
28 those for which a civil penalty is specifically provided, there is established a civil penalty for a
violation of these provisions, as follows... (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.”

31. Defendants’ conduct violates Labor Code sections 200, 204, 1194, and 1198, as well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage Order.

32. Pursuant to the “Minimum Wages” and “Hours and Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

33. Defendants systematically and uniformly failed to pay bonus wages to Plaintiff and other aggrieved employees.

34. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 200, 204, 1194, 1198, and 2699(a) and (f)(2), as well as attorney’s fees and costs all recoverable in an amount according to proof.

35. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

PRAYER FOR RELIEF

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

1. Certification of this action as a class action and appointment of Plaintiff and Plaintiff’s counsel to represent the Plaintiff Class;
2. Provision of class notice to Class Members as defined above;
3. Compensatory damages according to proof;
4. Statutory damages as provided under the Labor Code;

1 5. For maintenance of this claim as a Representative Action under the PAGA, and
2 providing Plaintiff and her counsel with all enforcement capability as if this action had been
3 instituted by the Department of Labor Standards Enforcement (“DLSE”);

4 6. For recovery of civil penalties as permitted by Labor Code section 2699.3, in an
5 amount according to proof;

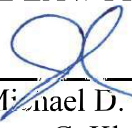
6 7. Reasonable attorneys’ fees and costs, pursuant to the PAGA, California Code of
7 Civil Procedure section 1021.5, and the California Labor Code, or other applicable law;

8 8. Costs of suit; and

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

10
11 COHELAN KHOURY & SINGER
12 NAKASE LAW FIRM, INC.

13 Dated: July 12, 2022

14 By: 

Michael D. Singer

Isam C. Khoury

J. Jason Hill

Rosemary C. Khoury

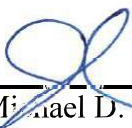
15 Attorneys for Plaintiff Victoria Van Tassel, on
16 behalf of herself and all others similarly situated
17 and aggrieved

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a jury trial of all claims triable as of right by jury.

20 COHELAN KHOURY & SINGER
21 NAKASE LAW FIRM, INC.

22 Dated: July 12, 2022

23 By: 

Michael D. Singer

Isam C. Khoury

J. Jason Hill

Rosemary C. Khoury

24 Attorneys for Plaintiff Victoria Van Tassel, on
25 behalf of herself and all others similarly situated
26 and aggrieved
27
28

1 **PROOF OF SERVICE**

2 *Van Tassel v. United Parcel Service, Inc.*

3 San Diego Superior Court Case No. 37-2022-00013716-CU-OE-CTL

4 I, Amber Worden, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 I further declare that I am readily familiar with the business' practice for collection and processing
8 of correspondence for mailing with United States Postal Service; and that the correspondence shall be
9 deposited with United States Postal Service this same day in the ordinary course of business.

10 On July 12, 2022, I instituted service of the forgoing document(s) described as:

11 **SECOND AMENDED CLASS ACTION COMPLAINT**

12 by placing a true copy of each document in a separate envelope addressed as follows:

13 **Counsel for Defendant**

14 Tritia Murata, Esq.
15 Maya Harel, Esq.
16 Monica A. Rodriguez, Esq.
17 Lauren R. Leibovitch, Esq.
18 MORRISON & FOERSTER LLP
19 707 Wilshire Boulevard
20 Los Angeles, CA 90017-3543

Co-counsel for Plaintiff

Brad Nakase, Esq.
NAKASE LAW FIRM, INC.
2221 Camino Del Rio South, Suite 300
San Diego, CA 92108

21 I then caused service of each document in the manner described below:

22 **[XX] BY MAIL:** I placed each for deposit in the United States Postal Service this same day, at my
23 business address shown above, following ordinary business practices.

24 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed July 12, 2022, at San Diego, California.

27
28 
Amber Worden