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SUPERIOR COURT-STOCKTON

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STEPHANIE BOHNER, CLERK

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Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

ERIC HOGNER, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KKW TRUCKING, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2025-0006549

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-203;
- (2) VIOLATION OF LABOR CODE § 226(a);
and
- (3) VIOLATION OF LABOR CODE § 2698,
ET SEQ.

DEMAND OVER \$25,000

BY FAX

1 Plaintiff Eric Hogner (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant KKW Trucking, Inc.
3 (“Defendant”) and Does 1-50 (collectively, “Defendants”). Plaintiff brings claims on behalf of
4 himself and other similarly situated current and former employees of Defendants for violations
5 of the California Labor Code and California Business & Professions Code, as follows:

6 **INTRODUCTION**

7 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
8 201-203, 226(a), 246, and 2698, *et seq.*, and the California Industrial Welfare Commission’s
9 (“IWC”) Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against employees of Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to pay all sick pay owed and failing to keep
15 accurate records as to Plaintiff and other employees.

16 4. Plaintiff is informed and believes, and based thereon, alleges that Defendants
17 have engaged in, among other things, a system of willful violations of the California Labor Code
18 and applicable IWC Wage Orders by creating and maintaining policies, practices, and customs
19 that knowingly deny employees the above-stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of the California Labor Code §§
22 201-203, 226(a), 246, and 2698, *et seq.*

23 6. Venue is proper in San Joaquin County because Plaintiff worked for Defendants
24 in Lathrop, California.

25 **PARTIES**

26 7. Plaintiff is a former employee of Defendants. Plaintiff was employed by
27 Defendants from about June 6, 2022, until on or about March 13, 2025. Plaintiff worked as a
28 non-exempt employee.

1 8. Plaintiff was and is the victim of the policies, practices, and customs of
2 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
3 by California Labor Code §§ 201-203, 226(a), 246, and 2698, *et seq.*, and the applicable IWC
4 Wage Orders.

5 9. Plaintiff is informed and believes and based thereon alleges that Defendant KKW
6 Trucking, Inc. was and is a California corporation doing business in the State of California.
7 Defendant is a trucking company.

8 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
9 mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and
10 partnerships, licensed to do business and actually doing business in the State of California.

11 11. As such, and based upon all the facts and circumstances incident to Defendants'
12 business in California, Defendants are subject to California Labor Code §§ 201-203, 226(a), 246,
13 and 2698, *et seq.*, and the applicable the IWC Wage Orders.

14 12. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
16 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious Defendants were responsible in some way for
19 the matters alleged herein and proximately caused Plaintiff and members of the general public
20 and Class to be subject to the illegal employment practices, wrongs, and injuries complained of
21 herein.

22 13. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each of the other
25 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
26 acting within the course and scope of said agency and employment.

27 14. Plaintiff is informed and believes and based thereon alleges that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or

1 joint venturer of, or working in concert with each of the other co-defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity. To
3 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
4 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

6 15. At all times herein mentioned, Defendants, and each of them, were members of,
7 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
8 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

9 16. At all times herein mentioned, the acts and omissions of various Defendants, and
10 each of them, concurred and contributed to the various acts and omissions of each and all of the
11 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
12 herein mentioned, Defendants, and each of them, ratified each and every act or omission
13 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
15 the damages as herein alleged.

16 **CLASS ACTION ALLEGATIONS**

17 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
18 California Code of Civil Procedure § 382, of the following classes (together, the “Class”):

19 a. All non-exempt employees in the State of California who earned non-
20 discretionary remuneration, including without limitation, bonuses and incentives, and were paid
21 sick pay in the same workweek, and whose employment ended (either voluntarily or
22 involuntarily) at any time from May 8, 2022, through the present (the “Sick Pay Regular Rate
23 Class”); and

24 b. All current and former non-exempt employees of Defendant in the State of
25 California who were paid based on a mileage rate, at any time from May 8, 2024, through the
26 present (the “Wage Statement Class”).

27 18. Plaintiff reserves the right to propose additional classes and/or subclasses, and/or
28 amend the above class definitions upon further discovery and investigation.

1 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
2 that joinder of all members would be impractical, if not impossible. The identity of the members
3 of the Class is readily ascertainable by review of Defendants' records, including payroll records.
4 Plaintiff alleges that Defendants: (a) failed to pay sick pay at the correct regular rate of pay, in
5 violation of Labor Code §§ 201-203 and 246; and (b) failed to provide accurate itemized wage
6 statements, in violation of Labor Code § 226(a).

7 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
8 necessary steps to represent fairly and adequately the interests of the classes defined above.
9 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
10 named Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in
11 the past and currently have a number of wage-and-hour class actions pending in California state
12 and federal courts.

13 21. Defendants uniformly administered a corporate policy and practice of: (a) failing
14 to pay sick pay at the correct regular rate of pay, in violation of Labor Code §§ 201-203 and 246;
15 and (b) failing to provide accurate itemized wage statements, in violation of Labor Code §
16 226(a).

17 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
18 conduct is accomplished with the advance knowledge and designed intent to willfully and
19 intentionally fail to accurately record proper hourly rates of pay, gross wages earned, and net
20 wages earned.

21 23. **Common Question of Law and Fact:** There are predominant common questions
22 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
23 concerning Defendants' policy and practice of: (a) failing to pay sick pay at the correct regular
24 rate of pay, in violation of Labor Code §§ 201-203 and 246; and (b) failing to provide accurate
25 itemized wage statements, in violation of Labor Code § 226(a).

26 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
27 Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
28 manner as the Class Members. As with all other non-exempt employees of Defendants, Plaintiff

1 regularly earned non-discretionary remuneration, including without limitation, bonus and
2 incentive wages. However, whenever Defendants paid sick pay to Plaintiff in the same period
3 that Plaintiff earned the non-discretionary remuneration, it was paid at Plaintiff's base rate of pay
4 rather than the correct, higher regular rate of pay. In this regard, Defendants failed to include any
5 non-discretionary remuneration earned in the calculation of the regular rate. To date, Plaintiff has
6 yet to receive the underpaid sick pay owed to him. Thus, Defendants are liable for waiting time
7 penalties under Labor Code § 203. Moreover, due to Defendants' miscalculation of the regular
8 rate of pay for purposes of paying sick pay referenced above, the wage statements issued to
9 Plaintiff did not reflect the accurate rates of pay, gross wages earned, and net wages earned, in
10 violation of Labor Code § 226(a). In addition, as Plaintiff was paid based on a mileage rate, the
11 wage statements issued to Plaintiff failed to identify the applicable mileage rate and mileage used
12 to calculate Plaintiff's wages. As such, Plaintiff is a member of the Class and has suffered the
13 alleged violations of California Labor Code §§ 201-203, 226(a), and 246.

14 25. The California Labor Code and upon which Plaintiff bases these claims is broadly
15 remedial in nature. These laws and labor standards serve an important public interest in
16 establishing minimum working conditions and standards in California. These laws and labor
17 standards protect the average working employee from exploitation by employers who may seek
18 to take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment.

20 26. The nature of this action and the format of laws available to Plaintiff and
21 members of the Class identified herein make the class action format a particularly efficient and
22 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
23 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
24 advantage since they would be able to exploit and overwhelm the limited resources of each
25 individual plaintiff with Defendants' vastly superior financial and legal resources. Requiring
26 each individual Class Member to pursue an individual remedy would also discourage the
27 assertion of lawful claims by employees who would be disinclined to file an action against their
28 former and/or current employer for real and justifiable fear of retaliation and permanent damage

1 to their careers at subsequent employment.

2 27. The prosecution of separate actions by the individual Class Members, even if
3 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
4 to individual Class Members against Defendants and which would establish potentially
5 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
6 individual Class Members which would, as a practical matter, be dispositive of the interest of the
7 other Class Members not parties to the adjudications or which would substantially impair or
8 impede the ability of the Class Members to protect their interests. Further, the claims of the
9 individual class members are not sufficiently large to warrant vigorous individual prosecution
10 considering all of the concomitant costs and expenses.

11 28. Such a pattern, practice, and uniform administration of corporate policy regarding
12 illegal employee compensation described herein is unlawful and creates an entitlement to
13 recovery by the Plaintiff and the Class identified herein, in a civil action, for all applicable
14 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
15 of California Labor Code §§ 203, 218.5, and 226(a), and Code of Civil Procedure § 1021.5.

16 29. Proof of a common business practice or factual pattern, which the named Plaintiff
17 experienced and is representative of, will establish the right of each of the class members to
18 recovery on the causes of action alleged herein.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE §§ 201-203**

21 **(BY PLAINTIFF AND THE SICK PAY REGULAR RATE CLASS AGAINST ALL**
22 **DEFENDANTS)**

23 30. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
24 though fully set forth herein.

25 31. Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees be
26 “calculated in the same manner as the regular rate of pay for the workweek in which the
27 employee uses paid sick time, whether or not the employee actually works overtime in that
28 workweek.”

1 32. Labor Code § 246(l)(2) further provides that paid sick time for non-exempt
2 employees be “calculated by dividing the employee’s total wages, not including overtime
3 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
4 of employment.”

5 33. Defendants violated Labor Code § 246 by failing to pay sick pay at the regular
6 rate of pay. Plaintiff and Class Members routinely earned non-discretionary incentives, including
7 without limitation, bonus and incentives wages, thereby increasing their regular rates of pay to
8 amounts that were higher than their base rates of pay. However, whenever sick pay was paid to
9 Plaintiff and Class Members during the same period that non-discretionary incentives were
10 earned, sick pay was paid at their base rates of pay rather than the correct, higher regular rates of
11 pay, as required under Labor Code § 246.

12 34. As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
13 Members their correct wages and accordingly owe waiting time penalties pursuant to Labor
14 Code § 203. Further, Plaintiff is informed and believes and based thereon alleges that such
15 failure to pay sick pay at the correct regular rate was willful, such that Plaintiff and Class
16 Members whose employment has separated are entitled to waiting time penalties pursuant to
17 Labor Code §§ 201-203.

18 35. Such a pattern, practice, and uniform administration of corporate policy regarding
19 illegal employee compensation as described herein is unlawful and creates an entitlement to
20 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
21 of the full amount of damages and penalties, attorneys’ fees, and costs of suit according to the
22 mandate of California Labor Code §§ 203 and 218.5.

23 **SECOND CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226(a)**

25 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

26 36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 37. Labor Code § 226(a) requires employers to provide itemized wage statements to

1 their employees that identify accurate information, including without limitation, all applicable
2 hourly rates of pay, piece-rate units earned and applicable piece rate, gross wages earned, and net
3 wages earned. Defendants, as a matter of policy and practice, failed in its affirmative obligation
4 to provide accurate itemized wage statements to Plaintiff and Class Members, in violation of
5 Labor Code § 226(a).

6 38. As a result of Defendants' regular rate violations as identified above, the wage
7 statements issued to Plaintiff and Class Members did not accurately identify the correct hourly
8 rates for sick pay, gross wages earned, and net wages earned, in violation of Labor Code §
9 226(a). Moreover, as Plaintiff and Class Members are paid based on a mileage rate, Defendants
10 failed to identify the applicable mileage rates and mileage used to calculate Plaintiff and Class
11 Members' wages on the wage statements, in violation of Labor Code § 226(a).

12 39. The issuance of inaccurate wage statements caused injury to Plaintiff and Class
13 Members as they cannot accurately verify and/or calculate their wages.

14 40. Such a pattern, practice, and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class
16 Members identified herein, in a civil action, for all damages or penalties pursuant to Labor Code
17 § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
18 California Labor Code § 226.

19 **THIRD CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

21 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL**
22 **DEFENDANTS)**

23 41. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
24 though fully set forth herein.

25 42. Plaintiff brings this cause of action as a proxy for the State of California and in
26 this capacity, seeks penalties on behalf of all Aggrieved Employees from March 26, 2024,
27 through the present, for Defendants' violations of Labor Code §§ 201-203, 226(a), and 246, as
28 identified above, for failing to pay sick pay wages at the regular rate of pay, and failing to keep

1 accurate records as to Plaintiff and Aggrieved Employees.

2 43. On or about March 26, 2025, Plaintiff sent written notice to the California Labor
3 & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-
4 203, 226(a), and 246, pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act
5 (“PAGA”). Plaintiff also sent written notice of said Labor Code violations to Defendant via
6 certified mail pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint,
7 the LWDA has not provided written notice regarding whether it intends to investigate the Labor
8 Code violations set forth in Plaintiff’s written notice.

9 44. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and
10 all applicable civil penalties for Defendants’ violations of Labor Code §§ 201-203, 226(a), 246,
11 and 2698 for the time period described above, on behalf of himself and other Aggrieved
12 Employees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
15 that this suit is brought against Defendants, jointly and severally, as follows:

- 16 1. For an order certifying the proposed Class;
- 17 2. For an order appointing Plaintiff as the representative of the Class as described
18 herein;
- 19 3. For an order appointing counsel for Plaintiff as Class Counsel;
- 20 4. Upon the First Cause of Action, for damages and/or penalties pursuant to Labor
21 Code §§ 201-203 and 218.5, and for costs and attorneys’ fees;
- 22 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
23 statute as set forth in California Labor Code § 226, and for costs and attorneys’ fees;
- 24 6. Upon the Third Cause of Action, for the full amount of penalties pursuant to the
25 PAGA, Labor Code §§ 201-203, 226(a), 246, and 2698, *et seq.*, and for costs and attorneys’ fees;
- 26 7. On all causes of action, for attorneys’ fees and costs as provided by California
27 Labor Code §§ 218.5 and 226, and Code of Civil Procedure § 1021.5; and
- 28 8. For such other and further relief as the Court may deem just and proper

1
2 DATED: June 11, 2025

DIVERSITY LAW GROUP, P.C.

3
4 By: 
5 Larry W. Lee
6 Mai Tulyathan
7 Attorneys for Plaintiff, the Class, and Aggrieved
8 Employees
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On June 11, 2025, I served the following document(s) described as: **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

KKW TRUCKING, INC.
c/o Steve Benninghoff
3100 Pomona Boulevard
Pomona, CA 91768
Agent for Service of Process

 X BY MAIL: by placing the original or X a true and correct copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the attached mailing list. I am readily familiar with the firm's practice for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On this date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for collection and mailing on this date at the address above following our office's ordinary business practices. The envelope(s) will be deposited with the United States Postal Service on this date, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 11, 2025, at Los Angeles, California.


Erika Mejía