

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Teresa Beaudet

Thomas A. Kearney, State Bar No. 90045
Prescott W. Littlefield, State Bar No. 259049
Andrew J. Kearney, State Bar No. 323867
KEARNEY LITTLEFIELD, LLP
100 N. Brand Blvd., Suite 424
Glendale, CA 91203
Telephone (213) 473-1900
Facsimile (213) 473-1919
tak@kearneylittlefield.com
pwl@kearneylittlefield.com
ajk@kearneylittlefield.com

Brandon Littlefield, State Bar No. 299153
LITTLEFIELD LAW
450 N. Brand Blvd., Ste. 600
Glendale, CA 91203
brandon@littlefieldlawpractice.com

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

TANYA PEREZ, an individual,
on behalf of herself, and all others similarly
situated,

Plaintiff,

vs.

BHIRES, LLC, a California Limited Liability
Company, and DOES 1 through 50, inclusive

Defendants.

CASE NO. **23STCV00167**

COMPLAINT FOR:

- 1) Failure to Pay Minimum Wage – Cal. Labor Code 1197;**
- 2) Inaccurate Wage Statements – Cal. Labor Code 226;**
- 3) Waiting Time Penalties – Cal. Labor Code 201-203;**
- 4) Failure to Reimburse – Cal. Labor Code 2802;**
- 5) Failure to Pay All Wages Twice Per Month – Labor Code 204;**
- 6) Failure to Pay Reporting Time Pay – 8 Cal. C. Regs. § 11010 et seq. and IWC Wage Order No. 9;**
- 7) Failure to Provide Employment Records – Labor Code 1198.5 and 432; and**
- 8) Violations Of California Labor Code Section 2698 *Et Seq.***

DEMAND FOR A JURY TRIAL

1 Plaintiff Tonya Perez (“Plaintiff”), in her representative capacity, and on her own behalf,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff was employed by Bhires, LLC, a Texas limited liability company
5 (“Defendant”). Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
6 (“PAGA”), California Labor Code § 2698 *et seq.* on a representative basis. All current and
7 former non-exempt employees of Defendant are aggrieved employees (“Employees”).

8 2. The California Labor Code requires employers to provide its Employees, among
9 other things, itemized wage statements, minimum wages, all wages twice per month, reporting
10 time wages, reimbursements and prompt payment of wages upon termination.

11 3. Defendant failed to pay Plaintiff minimum wage for all hours worked.

12 4. Defendant required Employees to work off the clock and failed to pay employees
13 for time worked off the clock and failed to pay Employees for all time worked off the clock.

14 5. Defendants failed to provide Plaintiff with accurate wage statements indicating all
15 hours worked and the applicable hourly rate.

16 6. Defendant required employees to call or text Defendant before their shift to
17 confirm whether they were reporting for a shift. Defendant failed to pay Employees reporting
18 time and failed to include reporting time wages on employees’ wage statements.

19 7. Defendant failed to include its correct address and business name in employees’
20 wage statements.

21 8. Defendants required Plaintiff and Employees to use their personal cell phones and
22 data plans as a requirement of their employment and failed to reimburse Plaintiff and the other
23 aggrieved employees accordingly.

24 9. As Plaintiff is no longer employed by Defendant, Defendant has continuously
25 failed to pay Plaintiff all wages owed and due.

26 10. Plaintiff, in her representative capacity, seeks civil penalties on behalf of herself
27 and other aggrieved employees for the above acts as well as those identified below, which violate
28 PAGA.

ALLEGATIONS

11. On October 28, 2022, Plaintiff electronically filed a complaint with the LWDA, case number LWDA-CM-899896-22, paid the statutory fee to the LWDA and sent a letter via certified mail to Defendants informing it of Plaintiff's complaints alleged herein. Plaintiff has not received notice of any attempts to cure by Defendants. Attached hereto as Exhibit "A" is a true and correct copy of the email confirmation received by Plaintiff's counsel of the online submission to the LWDA and payment of the \$75 filing fee.

12. The LWDA did not provide notice of its intention to investigate Defendants' alleged violations by January 2, 2022 – or sixty-five days after notice – and Defendants did not provide any notice of their intent to cure the alleged violations.

13. Defendants employed individuals throughout the State of California within one (1) year of the filing of the Complaint. Employer employed Employees as bus and/or shuttle (hereinafter "bus") drivers. Employees' job duties included but were not limited to cleaning buses, fueling buses and driving busses.

14. As explained further below, Employees were not paid all wages owed to them and were therefore not paid all wages at the time required by the Labor Code. They were also not provided with meal and rest periods and did not receive premium pay as required by the Labor Code.

15. Defendant failed to provide accurate itemized wage statements alongside paychecks on a semi-monthly basis in accordance with labor code section 226. Labor Code Section 226 states that wage statements must provide a statement of gross and net wages earned, in addition to the hours worked at each rate of pay. Employees wage statements only stated wages being earned at a regular rate and failed to reporting time wages.

16. Labor Code Section 204 provides that all wages earned are due twice during each calendar month. Reporting time wages are wages earned and were not included on Employees' wage statements.

17. Labor Code Sections 201 - 202 requires an employer to pay all wages due and owing within 24 hours of termination or within 72 hours when the employee terminated the

1 relationship without notice. As explained above, Defendant failed to pay all wages due and
2 owing to Employees during their employment. Neither did Defendant pay these wages owed
3 upon termination. Therefore, Defendant failed to pay all wages dues and owing upon
4 termination pursuant to Labor Code section 203.

5 18. Wage Order No. 9, Section 5, provides, each workday an employee is required to
6 report for work and does report, but is not put to work or is furnished less than half said
7 employee's usual or scheduled day's work, the employee shall be paid for half the usual or
8 scheduled day's work, but in no event for less than two hours nor more than four hours, at the
9 employee's regular rate of pay, which shall not be less than the minimum wage. If an employee
10 is required to report for work a second time in any one workday and is furnished less than two
11 hours of work on the second reporting, said employee shall be paid for two hours at the
12 employee's regular rate of pay. Employer failed to pay Employees for Reporting Time, as
13 required by Section 5 of the Industrial Welfare Commission Order No. 9-2001, when Employees
14 were required to check-in to confirm they would be working their scheduled shift.

15 19. Employees were required to arrive prior to the start of their shift to conduct
16 procedures, including but not limited to riding a shuttle up to the job site, receiving instruction,
17 signing in at the Central Security Station Room to pick up radio and keys.

18 20. Employees were required to check-in at a designated location and retrieve the
19 keys to buses they would be driving before clocking in.

20 21. Employees were not permitted to clock in until the start of their scheduled shifts.

21 22. Labor Code Section 2802 requires an employer to indemnify his or her employee
22 for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties. Employees were required to use their personal cell phones and
24 were not reimbursed for using their personal cell phones.

25 23. Labor Code Section 1198.5 requires an employer make personnel files and all
26 records an employer maintains relating to performance, grievance(s) and other documents
27 available upon request from the employee or former employee within 30 days. Employer failed
28 to produce said documents upon request.

24. Labor Code Section 432 requires an employer make documents signed by the employee which relate to obtaining or holding of employment with employer available upon request by the employee or former employee. Employer failed to produce said documents upon request.

JURISDICTION AND VENUE

25. This Court has jurisdiction over Plaintiff's claims for damages and for civil penalties under PAGA. Venue is proper in this judicial district pursuant to California Code of Civil Procedure section 395(a) as Plaintiff resides in the County of Los Angeles.

26. The amount in controversy exceeds the jurisdictional minimum of this Court.

III.

PARTY ALLEGATIONS

A. Plaintiff

27. At all times at issue herein, Plaintiff was a resident of Los Angeles County, California. Plaintiff was employed by Defendant as a non-exempt employee in Los Angeles County, California during the one-year period preceding the filing on this Complaint.

28. Plaintiff, like other aggrieved employees, was paid an hourly wage throughout her employment with Defendant.

B. Defendant Bhires, LLC

29. Defendant Bhires, LLC is a limited liability company organized and formed under the laws of the state of Texas, with its principal place of business located in the State of Texas. The acts complained of, which are the subject of this action, occurred, in substantial part, in the State of California.

C. Doe Defendants

30. Except as described herein, Plaintiff is ignorant of the true names of Defendants sued as DOES 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore sues these DOE Defendants by such fictitious names. Plaintiff will seek leave of the Court to amend this complaint to allege their true names and capacities when ascertained.

///

1 **D. Agency/Aiding And Abetting**

2 31. At all times herein mentioned, Defendants, and each of them, were agents or joint
3 venturers of each of the other Defendants, and in doing the acts alleged herein, were acting
4 within the course and scope of such agency. Each Defendant had actual and/or constructive
5 knowledge of the acts of each of the other Defendants, and ratified, approved, joined in,
6 acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the
7 benefits of said wrongful acts.

8 32. Defendants, and each of them, aided and abetted, encouraged and rendered
9 substantial assistance to the other Defendants in breaching their obligations to Plaintiff and
10 aggrieved Employees, as alleged herein. In taking action, as particularized herein, to aid and
11 abet and substantially assist the commissions of these wrongful acts and other wrongdoings
12 complained of, each of the Defendants acted with an awareness of his/her/its primary
13 wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment
14 of the wrongful conduct, wrongful goals, and wrongdoing.

15 **FIRST CAUSE OF ACTION**
16 **Failure to Pay Minimum Wage**
17 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
18 **(Violation of California Labor Code § 1197)**

19 33. Plaintiff incorporates by reference each and every paragraph of this Complaint as
20 if fully set forth herein.

21 34. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
22 “rest period” provisions of IWC Wage Order 9 and Labor Code section 1197.

23 35. As a result of Defendants’ failure to pay all wages Plaintiff was owed, Defendants
24 failed to pay Plaintiff the minimum wage fixed by the commission or by state law for all hours
25 Plaintiff worked.

26 36. Plaintiff is entitled to recover the unpaid balance of all minimum wages owed to
27 her under California Labor Code section 1194, as well as liquidated damages, attorneys’ fees,
28 costs, interest, and any other awards allowed by the Court pursuant to California Labor Code
1197, 1197.1, 1194, and 1194.2.

1 **SECOND CAUSE OF ACTION**

2 **Failure to Provide Accurate Wage Statements**
3 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
4 **(Violation of California Labor Code § 226)**

5 37. Plaintiff incorporates by reference each and every paragraph of this Complaint as
6 if fully set forth herein.

7 38. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
8 “rest period” provisions of IWC Wage Order 9 and Labor Code section 226.

9 39. Labor Code § 226(a) requires employers to furnish semi-monthly, or at the time
10 of each payment of wages, each employee with a statement itemizing, *inter alia*, the gross wages
11 earned and net wages earned. Labor Code § 226(e) provides that if an employer knowingly and
12 intentionally fails to provide a statement itemizing, *inter alia*, the gross wages and net wages
13 earned, then the employee is entitled to recover the greater of all actual damages, or fifty dollars
14 (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation up to
15 four thousand dollars (\$4,000).

16 40. Plaintiff did not receive accurate wage statements from Defendants showing all
17 wages earned.

18 41. Labor Code Section 226 states that wage statements must provide a statement of
19 gross and net wages earned, in addition to the hours worked at each rate of pay and the name and
20 address of the Employer.

21 42. Defendants failed to provide wage statements to Employees, including Plaintiff,
22 with the correct address and the correct business name on the wage statement.

23 43. Defendants knowingly and intentionally failed to furnish Plaintiff with accurate
24 itemized statements showing all amounts owed, as required by Labor Code § 226(a).

25 Accordingly, Defendants have failed to provide Plaintiff accurate wage statements showing all
26 her hours worked and the wages earned. As a result, Defendants are liable to Plaintiff for the
27 amounts provided by Labor Code § 226.

28 44. As a consequence of Defendants’ actions, Plaintiff has been injured and is entitled
to all available statutory penalties, costs and reasonable attorneys’ fees, including those provided

1 in California Labor Code § 226(e), as well as all other available remedies.

2 **THIRD CAUSE OF ACTION**

3 **Waiting Time Penalties**

4 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
5 **(Labor Code §§ 201-203)**

6 45. Plaintiff incorporates by reference each and every paragraph of this Complaint as
7 if fully set forth herein.

8 46. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
9 “rest period” provisions of IWC Wage Order 9 and Labor Code sections 201-203.

10 47. Defendants have willfully failed to pay, without abatement, wages owed to
11 Plaintiff upon the termination of Plaintiff’s and Defendants’ employment relationship.

12 48. Plaintiff’s employment relationship with Defendants has terminated.

13 49. It has been more than 30 days since all wages due and owing to Plaintiff upon
14 termination have been due.

15 50. Plaintiff is entitled to continuing wages in an amount not to exceed 30 days
16 because of Defendants’ failure to pay all wages owed.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Reimburse for Business Expenses**

19 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
20 **(California Labor Code § 2802)**

21 51. Plaintiff incorporates by reference each and every paragraph of this Complaint as
22 if fully set forth herein.

23 52. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
24 “rest period” provisions of IWC Wage Order 9 and Labor Code section 2802.

25 53. Plaintiff was required to utilize her personal cell phone for business-related
26 purposes, including but not limited to calling or texting Defendants to report for work.

27 54. Plaintiff was not provided reimbursement, or even offered reimbursement, for use
28 of her personal cell phone by Defendants despite the fact that she was required to use her
personal cell phone for work-related purposes for the benefit of Defendants.

55. California Labor Code Section 2802 provides that an employer “shall indemnify
his or her employee for all necessary expenditures or losses incurred by the employee in direct

1 consequence of the discharge of his or her duties....”

2 56. Plaintiff requests relief pursuant to Labor Code § 2802(c), which provides for the
3 reimbursement of necessary business expenditures along with appropriate interest, costs, and
4 attorneys’ fees.

5 **FIFTH CAUSE OF ACTION**
6 **Failure to Pay All Wages Twice Per Month**
7 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
8 **(California Labor Code § 204)**

9 57. Plaintiff incorporates by reference each and every paragraph of this Complaint as
10 if fully set forth herein.

11 58. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
12 “rest period” provisions of IWC Wage Order 9 and Labor Code section 204.

13 59. During her employment, Plaintiff was not paid all wages earned twice per month.

14 60. Wages earned by any person in any employment are due and payable twice during
15 each calendar month, on days designated in advance by the employer as the regular paydays.
16 Employers who violation section 204 shall be subject to a civil penalty under Labor Code section
17 210(a) of \$100 for each failure to pay each employee for an initial violation and for each
18 subsequent violation, \$200 for failure to pay each employee, plus 25 percent of the amount
19 withheld.

20 61. Plaintiff demands all applicable penalties pursuant to Labor Code section 210(a).

21 **SIXTH CAUSE OF ACTION**
22 **Failure to Pay Reporting Time Pay**
23 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
24 **(8 Cal. C. Regs. § 11010 et seq. and IWC Wage Order No. 9)**

25 62. Plaintiff incorporates by reference each and every paragraph of this Complaint as
26 if fully set forth herein.

27 63. At all times herein mentioned, Plaintiff was a non-exempt employee subject to the
28 “reporting time” provisions of IWC Wage Order 9 and 8 Cal. C. Regs. § 11010 et seq.

64. During her employment, Plaintiff was required to call or text Defendants to check
in for work and were required to arrive prior to the start of their shift to conduct procedures
pursuant to her job duties.

1 65. California Code of Regulations section 11010 *et seq.* and IWC Wage Order No.
2 7/9 mandates that when an employer requires an employee to report for work and then fails to
3 put them to work for at least half of their scheduled day's work, the employer must pay wages for
4 half the usual or scheduled day's work, but in no event for less than two hours nor more than four
5 hours, to the employee.

6 66. During the liability period Plaintiff was subject to Defendants' policy and by
7 failing to pay reporting time pay has been injured in an amount which can be determined by
8 Defendants' records.

9 **SEVENTH CAUSE OF ACTION**
10 **Failure to Provide Employment Records**
11 **On Behalf of Plaintiff, individually, against Defendant and DOES 1-50**
12 **(Labor Code §§ 1198.5 and 432)**

13 67. Plaintiff incorporates by reference each and every paragraph of this Complaint as
14 if fully set forth herein.

15 68. At all times herein mentioned, Plaintiff was a non-exempt employee subject to
16 Labor Code sections 1198.5 and 432 and IWC Wage Order 9.

17 69. Labor Code Section 1198.5 requires an employer to make personnel files and all
18 records an employer maintains relating to performance, grievance(s) and other documents
19 available upon request from the employee or former employee within 30 days.

20 70. Defendants failed to produce said documents upon request.

21 71. An employer is subject to a penalty of \$750 pursuant to Labor Code section
22 1198.5(k) for a violation of section 1198.5.

23 72. Labor Code Section 432 requires an employer make documents signed by the
24 employee which relate to obtaining or holding of employment with employer available upon
25 request by the employee or former employee.

26 73. Defendants failed to produce said documents upon request.

27 74. During the liability period Plaintiff was subject to Defendants' policy and by
28 failing to pay reporting time pay has been injured in an amount which can be determined by
Defendants' records.

EIGHTH CAUSE OF ACTION
Private Attorneys General Act (“PAGA”)
On Behalf of Plaintiff and all other aggrieved employees, against Defendant
and DOES 1-50
(Violation of California Labor Code § 2698 *et seq.*)

75. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, she seeks to recover on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

76. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

77. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

- a) § 201 (duty to pay all wages earned at time of discharge);
- b) § 202 (duty to pay all wages earned within 72 hours of resignation);
- c) § 203 (liability for wages continues as penalty from date of violation of sections 201 or 202 (waiting-time penalty));
- d) § 204 (duty to pay wages earned within prescribed time limit);
- e) § 226(a) (duty to provide accurate wage statements at time of each wage payment);
- f) § 1197 (duty to pay minimum wage for all hours worked);
- g) § 2802 (duty to reimburse for necessary business expenses)
- h) 8 Cal. C. Regs. § 11010 *et seq.* (duty to pay reporting time wages);
- i) All related terms, conditions, and labor standards and conditions set forth in the California Labor Code and the relevant orders of the IWC, including but not limited to Wage Order 9-2001.

78. With respect to violations of Labor Code sections 201, 202, and 203, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or

1 until an action therefor is commenced; but the wages shall not continue for more than 30 days.

2 79. With respect to violations of Labor Code section 226, Labor Code 226.3 imposes
3 a civil penalty in addition to any other penalty provided by law of \$250 per aggrieved employee
4 for the first violation, and \$1,000 per aggrieved employee for each subsequent violation of Labor
5 Code section 226(a).

6 80. With respect to a pattern or practice of violations of Labor Code section 226.8,
7 Labor Code section 226.8(c) imposes a civil penalty of not less than ten thousand dollars
8 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in
9 addition to any other penalties or fines permitted by law.

10 81. With respect to violations of section 204, Labor Code section 210(a) imposes a
11 penalty of \$100 for each failure to pay each employee for an initial violation and for each
12 subsequent violation or willful and intentional violation, \$200 for failure to pay each employee,
13 plus 25 percent of the amount withheld.

14 82. Labor Code section 2699 et seq. imposes a civil penalty of \$100 per pay period,
15 per aggrieved employee for initial violations, and \$200 per pay period, per aggrieved employee
16 for subsequent violations for all Labor Code provisions for which a civil penalty is not
17 specifically provided.

18 83. Labor Code section 2699 et seq. imposes a civil penalty of \$100 per pay period,
19 per aggrieved employee for initial violations, and \$200 per pay period, per aggrieved employee
20 for subsequent violations for all Labor Code provisions for which a civil penalty is not
21 specifically provided.

22 84. To the extent applicable, Plaintiff has satisfied the requirements of Labor Code
23 section 2699.3.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself individually and all aggrieved employees,
26 prays for the following judgment against Defendant:

27 A. That the Court find that Defendants have violated Labor Code §§ 201, 202, 203,
28 204, 226, 432, 1195.8, 1197, 2802, 8 Cal. C. Regs. § 11010 and all applicable IWC Wage

1 Orders;

2 B. That the Court find that Defendants have violated California Labor Code section
3 1194 and 1197 by failing to pay minimum wages to Plaintiff;

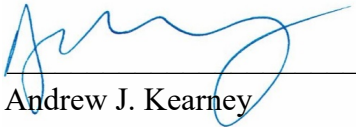
4 C. An award of civil penalties pursuant to PAGA;

5 D. An award of reasonable attorneys' fees and costs pursuant to California Labor
6 Code §§ 226, 1194, 2699(g) and/or other applicable law; and

7 E. Such other and further relief that the Court may deem just and proper.

8
9 Dated: January 4, 2023

KEARNEY LITTLEFIELD, LLP

10 By: 

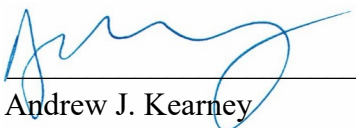
11 Andrew J. Kearney

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of herself and all others similarly situated, hereby requests a jury trial
14 on the claims so triable.

15 Dated: January 4, 2023

KEARNEY LITTLEFIELD, LLP

16
17 By: 

18 Andrew J. Kearney

Exhibit A

Subject: Thank you for submission of your PAGA Case.
Date: Friday, October 28, 2022 at 4:14:30 PM Pacific Daylight Time
From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Andrew Kearney

10/28/2022

LWDA Case No. LWDA-CM-916643-22
Law Firm : Kearney Littlefield LLP
Plaintiff Name : Tonya Perez
Employer: Bhires, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation
Date: Friday, October 28, 2022 at 4:14:45 PM Pacific Daylight Time
From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Andrew Kearney

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-916643-22

Order Number: ORD-000198854

Total:\$75.00

Card Type: Visa

Date: 10/28/2022

Billing Information

Name: Thomas Kearney

Email: ajk@kearneylittlefield.com

Billing Address:

100 N. Brand Blvd., Suite 424

Glendale, California

91203