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8 **Attorneys for Plaintiff Steven Gwin**

9 **SUPERIOR COURT OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

11 **STEVEN GWIN, an individual, on his own**
12 **behalf and on behalf of the Labor and**
13 **Workforce Development Agency;**

14 **Plaintiff,**

15 **v.**

16 **DELTA TRUCK CENTER; and DOES 1-**
17 **100, inclusive,**

18 **Defendants.**

19 **Case No.: STK-CV-UOE-2023-00006967**

20 **FIRST AMENDED COMPLAINT FOR**
21 **DAMAGES AND CIVIL PENALTIES**

- 22 **1. FAILURE TO PROVIDE REST PERIODS**
- 23 **OR PAY PREMIUMS**
- 24 **2. FAILURE TO PAY OVERTIME AT**
- 25 **CORRECT RATE**
- 26 **3. PAID SICK LEAVE VIOLATIONS**
- 27 **4. FAILURE TO FURNISH COMPLETE**
- 28 **AND ACCURATE ITEMIZED WAGE**
- STATEMENTS**
- 5. FAILURE TO PAY ALL WAGES DUE**
- UPON CESSATION OF EMPLOYMENT**
- 6. PRIVATE ATTORNEYS GENERAL ACT**

JURY TRIAL DEMANDED

Plaintiff Steven Gwin brings this action against Fresno Truck Center (dba Delta Truck Center) and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Plaintiff Steven Gwin ("Gwin") or "Plaintiff") was, at all times relevant herein, employed in San Joaquin County, California and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

2. Defendant Fresno Truck Center (aka “Defendant”) is a California corporation formed under the laws of California and does business in San Joaquin County as Delta Truck Center. Fresno Truck Center, at all times relevant, was an “employer” as defined by the Labor Code and applicable IWC Wage Order(s).

3. Fresno Truck Center and Does 1-100 are collectively referred to as Defendants.

4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURY TRIAL DEMAND

6. Venue is proper in this court because the unlawful acts alleged herein took place in San Joaquin County, California and Plaintiff's place of employment with Defendants was within San Joaquin County. With respect to the First through Fifth Causes of Action, Plaintiff demands a jury trial.

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GENERAL ALLEGATIONS

7. Gwin was hired by Fresno Truck Center on June 21, 2021 as a shipping/receiving worker at Fresno Truck Center's warehouse in French Camp, California. Gwin's employment with Fresno Truck Center ended on or around February 16, 2023.

8. At all times during his employment with Fresno Truck Center, Gwin was an hourly employee, eligible for overtime as well as rest and meal periods.

9. Fresno Truck Center failed to properly pay all overtime wages earned. Gwin and other employees earned nondiscretionary bonuses which, Gwin is informed and believes, were based on corporate profitability. For reasons unclear, these nondiscretionary bonuses were referred to in Gwin's wage statements as "other" or "commissions." (**Exhibit 1.**) However, when it came time to calculate and pay overtime wages, Fresno Truck Center ignored the value of these earned bonuses and paid overtime at 1.5 times Gwin's base, hourly rate of pay, resulting in an underpayment of wages. (See DLSE Enforcement Policies and Interpretations Manual, § 49.)

10. Gwin was not provided with all rest periods to which he was entitled. He typically worked a full schedule (shifts of eight hours or more), but nobody ever affirmatively relieved him of duty and gave him the opportunity to take an uninterrupted, ten-minute rest period. Gwin was also not paid an hour of pay at his regular rate of compensation for every rest period that was denied him.

11. Furthermore, Fresno Truck Center failed to provide paid sick leave as required. Gwin's wage statements failed to show the amount of paid sick leave available, or paid time off leave provided in lieu of sick leave. (**Exhibit 1, *supra*.**) Fresno Truck Center did not provide any other written notice containing such information. Gwin is informed and believes and thereon alleges that he did not accrue paid sick leave at the rate of not less than one hour per every thirty hours worked. Furthermore, when Gwin did receive paid sick leave, it was paid at only his base hourly rate; as with overtime, Fresno Truck Center ignored the value of earned nondiscretionary bonuses and failed to pay sick leave at the "regular rate of pay." (**Exhibit 2**; see also Lab. Code, § 247(l); 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual, § 49.)

1 12. Because Gwin was not paid overtime at the correct rate, and was not paid premiums
2 for all denied rest periods, the wage statements furnished to him failed to accurately show gross
3 wages earned, net wages earned, and all applicable hourly rates in effect during the pay period and
4 the corresponding number of hours worked, in violation of Labor Code section 226, subdivisions
5 (a)(1), (5), and (9).

6 13. At no point since Gwin's end of employment was he paid the full balance of unpaid
7 wages (including rest period premiums), *supra*.

8 14. On April 26, 2023, Gwin provided written notice to the Labor and Workforce
9 Development Agency ("LWDA") and Fresno Truck Center regarding the specific provisions of the
10 Labor Code alleged to have been violated, including the facts and theories to support those alleged
11 violations. (**Exhibit 3.**)

12 15. As of the filing of this Complaint, more than 65 calendar days after Gwin's written
13 notice, the LWDA has not provided written notice that it intends to investigate any of Gwin's
14 allegations as set forth above. Accordingly, Gwin has satisfied the administrative prerequisites
15 under Labor Code section 2699.3 to bring a civil action to recover civil penalties against
16 Defendants, in addition to other remedies, for violations of the California Labor Code.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
19 **(Lab. Code, § 226.7)**
 Against Defendants

20 16. Plaintiff hereby realleges and incorporates by reference each and every allegation set
21 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
22 allegations of this cause of action.

23 17. Labor Code section 226.7 requires employers to provide employees meal periods as
24 mandated by Order of the Industrial Welfare Commission. It states:

- 25 a. No employer shall require any employee to work during any meal or rest period
26 mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

18. Section 11 of the applicable IWC Wage Order provides:

“(A) 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. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.”

19. During the relevant time period, Plaintiff was not provided with rest breaks as required by law and did not receive an additional hour of premium pay for each missed rest break.

20. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

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SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME AT CORRECT RATE
(Lab. Code § 510 & 1198)
Against Defendants

21. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

22. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

23. Pursuant to Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

24. During the relevant time period, Plaintiff regularly worked overtime and doubletime.

25. During the relevant time period, Defendants intentionally and willfully failed to pay the proper overtime/doubletime wages due to Plaintiff.

26. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

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THIRD CAUSE OF ACTION
PAID SICK LEAVE VIOLATIONS
(Lab. Code, §§ 218, 233, 246 *et seq.*)
Against Defendants

27. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

28. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt employees at that employee's "regular rate of pay."

29. Labor Code section 246(i) provides that "[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

30. As set forth above, Defendants failed to provide Plaintiff with the written notice required by Labor Code section 246(i).

31. Furthermore, and according to the California Supreme Court, sick pay is a form of wages. (*Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

32. Labor Code section 233 provides that "any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5."

33. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff sick pay as required by law. Accordingly, Plaintiff did not receive the full amount of paid sick time that he was entitled to receive by law, and was therefore denied the right to use sick leave within the meaning of Labor Code sections 233(a) and (c).

34. Any employer who violates Labor Code section 233 is liable to employees for the greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys' fees and costs. (Lab. Code, § 233, subds. (d), (e).)

35. Further, Labor Code section 218 authorizes a private right of action to recover unpaid wages.

36. Wherefore, Plaintiff has been injured as set forth above and request relief as hereafter provided.

FOURTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
Against Defendants

37. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

38. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

39. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
2 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
3 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
4 fees. (Lab. Code, § 226, subd. (e)(1).)

5 40. An employee is deemed to suffer injury if the employer fails to provide a wage
6 statement or if the employer fails to provide accurate and complete information as required by any one
7 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
8 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
9 during the pay period or any of the other information required to be provided pursuant to Labor Code
10 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
11 and address of the employer and iv) the name of the employee and the last four digits of his or her
12 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
13 (iv).) "Promptly and easily determine" means a reasonable person would be able to readily ascertain
14 the information without reference to other documents or information. (Lab. Code, § 226, subd.
15 (e)(2)(C).)

16 41. As set forth above, Defendants intentionally and willfully failed to furnish accurate
17 itemized wage statements which complied with Labor Code section 226.

18 42. Wherefore, Plaintiff has been injured and requests relief as hereafter provided.

19 **FIFTH CAUSE OF ACTION**
20 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT**
21 **(Lab. Code, § 201, *et seq.*)**
22 **Against Defendants**

23 43. Plaintiff hereby realleges and incorporates by reference each and every allegation
24 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 44. Labor Code section 201 requires an employer to pay an employee all wages earned
27 and unpaid at the time the employer discharges the employee. Labor Code section 202 requires an
28

1 employer to pay the employee all wages due no later than 72 hours after the employee quits his
2 employment.

3 45. Labor Code section 203 provides: "If an employer willfully fails to pay, without
4 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
5 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
6 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
7 the wages shall not continue for more than 30 days".

8 46. During the relevant time period, Defendants failed to pay Plaintiff all earned but
9 unpaid wages upon cessation of employment.

10 47. Wherefore, Plaintiff requests relief as hereafter provided.

11 **SIXTH CAUSE OF ACTION**
12 **PRIVATE ATTORNEYS GENERAL ACT**
13 **(Lab. Code, § 2698 *et seq.*)**
14 **Against Defendants**

15 48. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 49. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
19 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
20 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
21 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
22 to the procedures outlined in Labor Code section 2699.3.

23 50. Plaintiff was employed by Defendants and the alleged violations were committed
24 against her during her time of employment. Plaintiff is therefore an aggrieved employee as defined
25 by Labor Code section 2699, subdivision (c). Other current and former employees are also
26 aggrieved employees in that one or more of the alleged violations were also committed against
27 them during their time of employment with Defendants.
28

51. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, 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.

52. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

53. Pursuant to the PAGA, Plaintiff seeks to recover civil penalties against Defendants for violations of the Labor Code.

54. Wherefore, Plaintiff and other employees (current and former) have been aggrieved and Plaintiff, on behalf of the Labor and Workforce Development Agency, requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

As to the First through Fifth Causes of Action:

1. That this Court award injunctive relief, including that available under Labor Code sections 226(h) and 248.5(e);
2. That this Court award unpaid wages, including rest break premiums;
3. That this Court award statutory penalties including, but not limited to, those available under Labor Code sections 203 and 226, subdivision (e);
4. That this Court award statutory attorneys' fees and costs under Labor Code sections 218.5, 226(e)(1) and 248.5(e), as well as those available under Code of Civil Procedure section 1021.5;

1 5. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law; and

3 6. That this Court award such other and further relief as the court deems just and proper.

4 **As to the Sixth Cause of Action:**

5 1. For civil penalties, including but not limited to those available under Labor Code
6 sections 226.3, 248.5, 558, and 2699(f);

7 2. For injunctive relief;

8 3. For statutory attorneys' fees and costs, including but not limited to those available
9 under Labor Code section 2699(g);

10 4. For prejudgment and post-judgment interest according to any applicable provision
11 of law or as otherwise permitted by law, including those available under Civil Code
12 sections 3287(a) and 3289(b); and

13 5. For such other and further relief as the court deems just and proper.

14 ///

15 **DATED:** March 13, 2024

MAYALL HURLEY P.C.

16
17 By _____



JOHN P. BRISCOE
Attorneys for Plaintiff Steven Gwin

EXHIBIT 1

CO. FILE DEPT. CLOCK NUMBER 075
XKB 800570 604205 0007404888 1

Earnings Statement



DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Period Beginning: 07/14/2022
Period Ending: 07/20/2022
Pay Date: 07/25/2022

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

STEVEN A GWIN

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Commission			1,040.26	
Retro			38.21	38.21
Other				698.65
Gross Pay			\$1,078.47	30,573.37

Other Benefits and Information	this period	total to date
401K Elig Wages	1,078.47	30,573.37
401K Hours		1,202.10
Sick Available		-20.00

Deductions	Statutory		
	Federal Income Tax	-52.23	1,748.36
	Social Security Tax	-66.86	1,749.29
	Medicare Tax	-15.64	409.11
	CA State Income Tax	-14.33	529.56
	CA SDI Tax	-11.87	310.36

Deposits	
Account No.	[REDACTED]
Transit/ABA	XXXX XXXX
Pending	

Important Notes

BASIS OF PAY: HOURLY

YOUR BANK WAS NOTIFIED OF YOUR REQUEST FOR DIRECT DEPOSIT. IT WILL BEGIN AFTER ACCOUNT VERIFICATION.

IF NO CA Spl Used IS LISTED YOU HAVE USED ZERO HRS

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Other		
401K	-32.35*	917.20
Ee Receivable		51.93
125 Health		2,359.00
Net Pay	\$885.19	
Net Check	\$885.19	

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,046.12

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DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

XKB
Payroll check number: 0007404888
Pay date: 07/25/2022

90-477/1222

Pay to the
order of:

STEVEN A GWIN

This amount:

EIGHT HUNDRED EIGHTY FIVE AND 19/100 DOLLARS

\$885.19

ASSISTANCE WITH VERIFICATION AVAILABLE AT 877-423-7243
VOID AFTER 180 DAYS
VOID NON-NEGOTIABLE

Wells Fargo Bank, N.A.
5401 California Ave
Bakersfield, CA 93309

EXHIBIT 2

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	075
XKB	800570	604205		0000460108	1

Earnings Statement



DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Period Beginning: 11/01/2022
Period Ending: 11/15/2022
Pay Date: 11/18/2022

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Optional Higher Withholding Table

STEVEN A GWIN

Social Security Number: [REDACTED]

Earnings	rate	hours	this period	year to date
Reg	20.0000	76.90	1,538.00	
O/T	30.0000	2.30	69.00	
Sick	20.0000	8.00	160.00	
Birthday				160.00
Other				885.90
Retro				144.30
Gross Pay			\$1,767.00	47,872.43

Your federal taxable wages this period are
\$1,474.81

Other Benefits and Information

	this period	total to date
401K Elig Wages	1,767.00	47,872.43
401K Hours	87.20	1,889.30
Totl Hrs Worked	87.20	

Sick Available -36.00

Important Notes

BASIS OF PAY: HOURLY

IF NO CA Sppl Used IS LISTED YOU HAVE USED ZERO HRS

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Deductions	Statutory		
	Social Security Tax	-99.11	2,738.26
	Medicare Tax	-23.18	640.40
	CA State Income Tax	-31.55	828.48
	CA SDI Tax	-17.58	485.82
	Federal Income Tax		2,153.18
	Other		
	Roth	-106.02	932.82
	125 Health	-168.50*	3,707.00
	401K	-123.69*	1,981.61
	Ee Receivable		161.42
	Net Pay	\$1,197.37	
	Checking	-1,197.37	
	Net Check	\$0.00	

* Excluded from federal taxable wages

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DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Advice number: 00000460108
Pay date: 11/18/2022

Deposited to the account of	account number	transit	ABA	amount
STEVEN A GWIN	[REDACTED]	XXXX	XXXX	\$1,197.37

THIS IS NOT A CHECK

NON-NEGOTIABLE

EXHIBIT 3

LAW OFFICES OF

MAYALL HURLEY

A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

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STOCKTON, CALIFORNIA 95207

VLADIMIR F. KOZINA
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NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
SHANE M. HOOVER

April 26, 2023

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Delta Truck Center
10182 S. Harlan Rd.
French Camp, CA 95231

Re: Steven Gwin/Delta Truck Center

To whom it may concern:

This firm represents Steven Gwin ("Gwin") in relation to his former employment with Delta Truck Center ("DTC"). In accordance with Labor Code section 2699.3, this letter shall serve as Gwin's written notice to the Labor and Workforce Development Agency ("LWDA") and DTC regarding the following violations, and facts and theories supporting those violations, on Gwin's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of DTC.

Gwin was hired by DTC on June 21, 2021 as a shipping/receiving worker at DTC's warehouse in French Camp, California. Gwin's employment with DTC ended on or around February 16, 2023. At all times throughout his employment, Gwin was an hourly, nonexempt employee, eligible for overtime as well as rest and meal periods.

DTC failed to properly pay all overtime wages earned by Gwin. Gwin and other employees earned nondiscretionary bonuses which, Gwin is informed and believes, were based on corporate profitability. For reasons unclear, these nondiscretionary bonuses were referred to in Gwin's wage statements as "other" or "commissions." (Exhibit A.) However, when it came time to calculate and pay overtime wages, DTC ignored the value of these earned bonuses and paid overtime at 1.5 times Gwin's base, hourly rate of pay, resulting in an underpayment of wages. (See DLSE Enforcement Policies and Interpretations Manual, § 49.) Accordingly, DTC failed to pay all earned overtime at the required rate, resulting in violations of Labor Code section 510.

Labor and Workforce Development Agency
Delta Truck Center
Re: Steven Gwin
April 26, 2023
Page 2 of 3

Gwin was not provided with all rest periods to which he was entitled. He typically worked a full schedule (shifts of eight hours or more), but nobody ever affirmatively relieved him of duty and gave him the opportunity to take an uninterrupted, ten-minute rest period. Gwin was also not paid an hour of pay at his regular rate of compensation for every rest period that was denied him. Accordingly, DTC violated Labor Code section 226.7.

Furthermore, DTC failed to provide paid sick leave as required. Gwin's wage statements failed to show the amount of paid sick leave available, or paid time off leave provided in lieu of sick leave. (Exhibit A, *supra*.) DTC did not provide any other written notice containing such information. Gwin is informed and believes and thereon alleges that he did not accrue paid sick leave at the rate of not less than one hour per every thirty hours worked. Furthermore, when Gwin did receive paid sick leave, it was paid at only his base hourly rate; as with overtime, DTC ignored the value of earned nondiscretionary bonuses, and failed to pay sick leave at the "regular rate of pay." (Exhibit B; see also Lab. Code, § 247(l); 29 U.S.C. § 207(e); DLSE Enforcement Policies and Interpretations Manual, § 49.) Accordingly, DTC violated Labor Code sections 233 and 246.

Because Gwin was not paid overtime at the correct rate, and was not paid premiums for all denied rest periods, the wage statements furnished to him failed to accurately show gross wages earned, net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code section 226, subdivisions (a)(1), (5), and (9).

At no point since Gwin's end of employment was he paid the full balance of unpaid wages (including rest period premiums), *supra*. Accordingly, DTC violated Labor Code sections 201 and 202.

The foregoing violations, and each of them, were committed as against current and other former employees of DTC, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Gwin intends to file a civil complaint against DTC pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Labor and Workforce Development Agency
Delta Truck Center
Re: Steven Gwin
April 26, 2023
Page 3 of 3

Sincerely,

MAYALL HURLEY P.C.

By 

JOHN P. BRISCOE

Attachment

EXHIBIT A

CO. FILE DEPT. CLOCK NUMBER 075
XKB 800570 604205 0007404888 1

Earnings Statement



DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Period Beginning: 07/14/2022
Period Ending: 07/20/2022
Pay Date: 07/25/2022

STEVEN A GWIN

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number:

Earnings	rate	hours	this period	year to date
Commission			1,040.26	
Retro			38.21	38.21
Other				698.65
Gross Pay			\$1,078.47	30,573.37

Other Benefits and Information	this period	total to date
401K Elig Wages	1,078.47	30,573.37
401K Hours		1,202.10
Sick Available		-20.00

Deductions	Statutory		
	Federal Income Tax	-52.23	1,748.36
	Social Security Tax	-66.86	1,749.29
	Medicare Tax	-15.64	409.11
	CA State Income Tax	-14.33	529.56
	CA SDI Tax	-11.87	310.36

Deposits	
Account No.	
Transit/ABA	XXXX XXXX
Pending	

Important Notes

BASIS OF PAY: HOURLY

YOUR BANK WAS NOTIFIED OF YOUR REQUEST FOR DIRECT DEPOSIT. IT WILL BEGIN AFTER ACCOUNT VERIFICATION.

IF NO CA Spl Used IS LISTED YOU HAVE USED ZERO HRS

Additional Tax Withholding Information

Taxable Marital Status:

CA: Single

Exemptions/Allowances:

CA: 0

Other		
401K	-32.35*	917.20
Ee Receivable		51.93
125 Health		2,359.00
Net Pay	\$885.19	

Net Check \$885.19

* Excluded from federal taxable wages

Your federal taxable wages this period are
\$1,046.12

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DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

XKB
Payroll check number: 0007404888
Pay date: 07/25/2022

90-477/1222

Pay to the
order of:

STEVEN A GWIN

This amount:

EIGHT HUNDRED EIGHTY FIVE AND 19/100 DOLLARS

\$885.19

ASSISTANCE WITH VERIFICATION AVAILABLE AT 877-423-7243

VOID NON-NEGOTIABLE

VOID AFTER 180 DAYS

Wells Fargo Bank, N.A.
5401 California Ave
Bakersfield, CA 93309

EXHIBIT B

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	075
XKB	800570	604205		0000460108	1

Earnings Statement



DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Period Beginning: 11/01/2022
Period Ending: 11/15/2022
Pay Date: 11/18/2022

STEVEN A GWIN

Filing Status: Married filing jointly
Exemptions/Allowances:
Federal: Optional Higher Withholding Table

Social Security Number:

Earnings	rate	hours	this period	year to date
Reg	20.0000	76.90	1,538.00	
O/T	30.0000	2.30	69.00	
Sick	20.0000	8.00	160.00	
Birthday				160.00
Other				885.90
Retro				144.30
Gross Pay			\$1,767.00	47,872.43

Your federal taxable wages this period are
\$1,474.81

Other Benefits and Information

	this period	total to date
401K Elig Wages	1,767.00	47,872.43
401K Hours	87.20	1,889.30
Totl Hrs Worked	87.20	

Sick Available -36.00

Important Notes

BASIS OF PAY: HOURLY

IF NO CA Sppl Used IS LISTED YOU HAVE USED ZERO HRS

Additional Tax Withholding Information

Taxable Marital Status:
CA: Single
Exemptions/Allowances:
CA: 0

Deductions	Statutory		
	Social Security Tax	-99.11	2,738.26
	Medicare Tax	-23.18	640.40
	CA State Income Tax	-31.55	828.48
	CA SDI Tax	-17.58	485.82
	Federal Income Tax		2,153.18
	Other		
	Roth	-106.02	932.82
	125 Health	-168.50*	3,707.00
	401K	-123.69*	1,981.61
	Ee Receivable		161.42
	Net Pay	\$1,197.37	
	Checking	-1,197.37	
	Net Check	\$0.00	

* Excluded from federal taxable wages

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DELTA TRUCK CENTER
10182 S HARLAN ROAD
FRENCH CAMP, CA 95231

Advice number: 00000460108
Pay date: 11/18/2022

Deposited to the account of	account number	transit	ABA	amount
STEVEN A GWIN		XXXX	XXXX	\$1,197.37

THIS IS NOT A CHECK

NON-NEGOTIABLE

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 112 S. Church Street, Lodi, CA 95240, that is located in the county where the mailing and/or delivery below took place.

On March 13, 2024, I served the following document:

FIRST AMENDED COMPLAINT FOR DAMAGES AND CIVIL PENALTIES

addressed to:

Howard Sagaser
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave. Ste. 400
Fresno, CA 93704
HAS@sw2law.com
Mehgan Ferreira Kisling
mehgan@sw2law.com

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Lodi, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☐ **BY EXPRESS SERVICE CARRIER:** On the date specified below, I directed to be deposited in a box or other facility regularly maintained by Federal Express or delivered to a courier or driver authorized by said express service carrier to receive documents, a copy of the document mentioned above, in an envelope designed by the said express service carrier, with delivery fees paid or provided for, addressed to the individuals and/or entities mentioned above.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 13, 2024, at Lodi, California.


LINDSAY RILEY