

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
Lauren Falk, Esq. (#316893)
Ava Issary, Esq. (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff MONICA MELISSA GUTIERREZ,
on behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

MONICA MELISSA GUTIERREZ, on behalf
of the general public as private attorney general,

Plaintiff,

v.

COPAN DIAGNOSTICS INC., a California
Corporation, and DOES 1-50, inclusive,

Defendant.

Case No. **CVRI 2306963**
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiff MONICA MELISSA GUTIERREZ (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendant COPAN DIAGNOSTICS, INC., a California Corporation and DOES 1-50, inclusive (“Defendant”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendant violated various provisions of the California Labor Code. As set forth below, Defendant implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to pay minimum and overtime wages, (b) failure to pay all wages earned and owed upon separation from Defendant’s employ, (c) failure to pay wages timely during employment, (d) failure to provide accurate itemized wage statements, and (e) failure to reimburse necessary business expenses, (f) failure to pay vested vacation time earned. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendant because, upon information and belief, Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California

1 Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendant is doing business throughout California, including but not
4 limited to Riverside County, and each Defendant is within the jurisdiction of this Court for service
5 of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and all other
6 aggrieved employees within the State of California. Defendant employs numerous aggrieved
7 employees in in the State of California.

8 6. On information and belief, Defendant has conducted business within the State of
9 California during the purported liability period and continue to conduct business throughout the
10 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
11 similarly situated aggrieved employees within California.

12 7. The California Superior Court also has jurisdiction in this matter because on
13 information and belief there are no federal questions at issue, as the issues herein are based solely
14 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
15 California Code of Civil Procedure, the California Civil Code, and the California Business and
16 Professions Code.

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendant consistently maintained and enforced against
19 Defendant's aggrieved Employees, among others, the following unlawful practices and policies,
20 in violation of California state wage and hour laws: (a) failure to pay minimum and overtime
21 wages, (b) failure to pay all wages earned and owed upon separation from Defendant's employ,
22 (c) failure to pay wages timely during employment, (d) failure to provide accurate itemized wage
23 statements, (e) failure to reimburse necessary business expenses, (f) failure to pay vested vacation
24 time earned.
25

26 9. On information and belief, during the statutory liability period and continuing to
27 the present, Defendant has had a consistent policy of failing to pay wages including overtime
28 wages for hours worked while subject to the control of Defendant.

10. On information and belief, during the statutory liability period and continuing to the present, Defendant has had a consistent policy of failing to timely pay wages upon separation.

11. On information and belief, during the statutory liability period and continuing to the present, Defendant has had a consistent policy of failing to timely pay wages during Plaintiff and Aggrieved Employees' employment.

12. On information and belief, during the statutory liability period and continuing to the present, Defendant has failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

13. On information and belief, during the statutory liability period and continuing to the present, Defendant failed to reimburse necessary business expenses incurred by Plaintiff and aggrieved employees.

14. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-204, 226, 227.3, 510, 558, 226.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, 2804, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

15. Plaintiff, MONICA MELISSA GUTIERREZ, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendant in November of 2022 until August of 2023 as a Non-Exempt Employee with the title of Accounting Specialist and worked during the liability period for Defendant, at Defendant's Murrieta, CA location until Plaintiff's separation from Defendant's employ in approximately August 2023. Plaintiff's duties included but were not limited to processing and verifying new invoices, maintaining spreadsheets, and bank work affiliations.

16. As Defendant's employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) to perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- b) not paid timely upon separation from Defendant’s employment;
- c) not paid timely during their employment;
- d) not provided accurate itemized wage statements;
- e) not reimbursed necessary business expenses;
- f) failure to pay vested vacation time earned.

17. On information and belief, Defendant willfully failed to pay all earned wages in the form regular wages and overtime wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendant returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendant, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

B. Defendant

18. Defendant, COPAN DIAGNOSTICS, INC., a California Corporation, that operates as a leading supplier of bacteriology swabs, viral transport media, VTM, and molecular transport systems. Defendant operates in two (2) California locations. Plaintiff estimates there are in excess of one hundred (100) Non-Exempt Employees who work or have worked for Defendant over the last year.

19. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendant by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

20. Plaintiff is informed and believes and thereon alleges that each Defendant, directly

1 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
2 Representative Group, and exercised control over their wages, hours, and working conditions.
3 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
4 pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business
5 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable
6 to the other Defendant.

7 **IV. GENERAL ALLEGATIONS**

8 21. At all times set forth herein, Defendant employed Plaintiff and other persons in the
9 capacity of non-exempt positions, however titled, throughout the state of California.

10 22. Plaintiff is informed and believes Aggrieved employees have at all times pertinent
11 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
12 rules and regulations of the IWC California Wage Orders.

13 23. Defendant continues to employ Non-Exempt Employees, however titled, in
14 California and implement a uniform set of policies and practices to all non-exempt employees, as
15 they were all engaged in the generic job duties related to Defendant's production of bacteriology
16 swabs, viral transport media, VTM, and molecular transport systems. .

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendant are and were
18 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
19 the requirements of California's wage and employment laws.

20 25. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
21 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
22 week.

23 26. During the relevant time frame, Defendant compensated Plaintiff and Aggrieved
24 Employees based upon an hourly rate.

25 27. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
26 Employees typically worked five (5) days a week.

27 28. Plaintiff is informed and believes that the Aggrieved Employees were required to
28

1 keep similar schedules.

2 29. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
3 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for minimum
4 and overtime wages.

5 30. Defendants failed to compensate Plaintiff and Aggrieved Employees for all hours
6 worked as Plaintiff and Aggrieved Employees were subjected to working off the clock. For
7 instance, Plaintiff and Aggrieved Employees were required to drop off mail which was
8 approximately a half mile away and took Plaintiff and Aggrieved Employees approximately 5-10
9 minutes, Plaintiff and Aggrieved Employees were not compensated for these off the clock
10 activities assigned to her by management.

11 31. Plaintiff and Aggrieved Employees performed other work related activities off the
12 clock such as responding to alerts sent to her through Defendants' SAP Concur and ADP
13 applications which would happen on a regular basis. These alerts were sent and responded to while
14 Plaintiff and Aggrieved Employees are off the clock and no compensation was provided.

15 32. As a result of off the clock work performed, Plaintiff and Aggrieved Employees
16 were not accurately compensated for minimum and overtime wages.

17 33. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
18 or should have known that Plaintiff and the other Aggrieved Employees were entitled to receive
19 all wages owed to them during their employment. Plaintiff and the other Aggrieved Employees
20 did not receive payment of all wages, including overtime, within any time permissible under
21 California Labor Code section 204.

22 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein
23 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
24 thereof for resignations without prior notice as the case may be) they had a duty to accurately
25 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages and
26 overtime wages, and vacation vested vacation pay which Defendant had the financial ability to pay
27 such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
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1 because of the above-specified violations

2 35. Defendants further failed to pay Plaintiff and Aggrieved Employees vested vacation
3 pay in accordance with Labor Code § 227.3.

4 36. Defendant failed to reimburse Plaintiff and Aggrieved Employees for business
5 expenses incurred pursuant to California Labor Code § 2802. Plaintiff was not reimbursed for her
6 personal cell phone use. Such cell phone use was required for work related purposes. For instance,
7 Plaintiff and Aggrieved Employees were required to download and use Defendants' work
8 applications such as SAP Concur and ADP. Plaintiff and Aggrieved Employees utilized these
9 applications for work purposes on a regular and consistent basis. .

10 37. Upon information and belief, Defendant knew and or should have known that it is
11 improper to implement policies and commit unlawful acts such as:

- 12 (a) failing to pay overtime and minimum wages;
- 13 (b) failing to pay timely wages upon separation from Defendant's employ;
- 14 (c) failing to pay timely wages during employment;
- 15 (d) failing to maintain accurately itemized wage statements;
- 16 (e) failing to reimburse necessary business expenses;
- 17 (f) failure to pay vested vacation time earned.

18 38. In addition to the violations above, and on information and belief, Defendant knew
19 they had a duty to compensate Plaintiff and Aggrieved employees for the allegations asserted
20 herein, and that Defendant had the financial ability to pay such compensation, but willfully,
21 knowingly, recklessly, and/or intentionally failed to do so.

22 39. Plaintiff and Aggrieved employees they seek to represent are covered by, and
23 Defendant are required to comply with, applicable California Labor Codes, Industrial Welfare
24 Commission Occupational Wage Orders (hereinafter "IWC Wage Orders") and corresponding
25 applicable provisions of California Code of Regulations, Title 8, § 11000 *et seq.*
26

27 **V. REPRESENTATIVE CLAIMS**

28 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.***

1 40. Plaintiff incorporates by reference and re-alleges each and every allegation
2 contained above, as though fully set forth herein.

3 41. PAGA is a mechanism by which the State of California can enforce state labor laws
4 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
5 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a
6 law enforcement action designed to protect the public and not to benefit private parties. The
7 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
8 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
9 Legislature specified that "it was...in the public interest to allow aggrieved employees, acting as
10 private attorneys general to recover civil penalties for Labor Code violations..." Stats. 2003, Ch.
11 906, section 1. Accordingly, PAGA claims cannot be subject to arbitration.

12 42. Plaintiff brings this Representative Action on behalf of the State of California with
13 respect to himself and all other individuals who are or previously were employed by Defendant as
14 non-exempt California employees during the applicable statutory period (the "aggrieved
15 employees").

16 43. On October 23, 2023 Plaintiff complied with notice requirements pursuant to Labor
17 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
18 indicating that the LWDA and Defendant were put on notice of the claims alleged here and that
19 the notice requirement has been satisfied. Sixty five (65) days have passed and the LWDA has
20 not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in
21 a representative capacity. The substance and violations set forth in this Complaint of which the
22 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
23 Action Complaint to the LWDA.

24 44. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
25 Plaintiff brings this cause of action on behalf of all current and former California non-exempt
26 Employees of Defendant.
27

28 45. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for

1 which Defendant are liable due to numerous Labor Code violations as set forth in this Complaint,
2 including without limitation Labor Code section 201-204, 226, 226.3, 510, 558, 1174, 1174.5,
3 1175, 1194, 1197, 1197.1, 1198, 2802, and, 2698 *et seq.*, applicable IWC Wage Orders and
4 California Code of Regulations, Title 8, section 11000 *et. seq.*

5 46. Defendant violated Labor Code §1194 by failing to pay minimum wages to Plaintiff
6 and Aggrieved Employees as the off-the-clock work described above was not compensated for by
7 Defendant.

8 47. Defendant violated Labor Code section 510, and 1194 by failing to accurately pay
9 overtime wages owed. Therefore, Defendant violated section 510, and 1194 by not compensating
10 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
11 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation
12 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
13 (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the
14 regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight
15 (8) hours in a day on the seventh day of work in a particular work week.

16 48. Defendant also willfully violated Labor Code sections 201-203 by failing to provide
17 all owed wages at separation from employment. Labor Code sections 201 and 202 require
18 Defendant to pay their employees all wages due either at time of firing, or within seventy-two (72)
19 hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
20 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
21 the subject employee's wages until the back wages are paid in full or an action is commenced. The
22 penalty cannot exceed 30 days of wages.

23 49. Plaintiff and all other aggrieved employees who were separated from employment
24 are entitled to compensation for all forms of wages earned, including but not limited to
25 compensation minimum and overtime wages, but to date have not received such compensation,
26 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-204.

27 50. On information and belief, Defendant willfully failed to pay all wages due and
28

1 owing upon separation from employment. These wages include minimum and overtime wages.

2 51. On information and belief, Defendant willfully failed to pay all wages due and
3 owing during employment. These wages include minimum and overtime wages.

4 52. On information and belief, Defendant failed to provide accurate itemized wage
5 statements which failed to include all hours worked, including overtime, due and owing to Plaintiff
6 and the aggrieved employees pursuant to Labor Code section 226(a). Defendant further failed to
7 include or itemize the gift card payments made to Plaintiffs and Aggrieved Employees.

8 53. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
9 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
11 for each violation in a subsequent citation, for which the employer fails to provide the employee a
12 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

13 54. On information and belief, Defendant failed to pay vested vacation time pursuant
14 to Labor Code section 227.3.

15 55. Additionally, Defendant have no accurate records relating to aggrieved employees'
16 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
17 rates, in violation of applicable Wage Orders. Similarly, Defendant failed to maintain accurate
18 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

19 56. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Aggrieved
20 Employees for necessary expenditures incurred in direct consequences of the discharge of his or
21 her duties. As a necessary part of employment, Plaintiff and on information and belief Aggrieved
22 Employees, were not adequately reimbursed by Defendant for expenses related to all expenses
23 incurred as a result of their personal vehicle usage, as described above. Despite these realities of
24 the job, Defendant failed to provide reimbursements.

25 57. Labor Code §2804 states in pertinent part: "Any contract or agreement, express or
26 implied, made by any employee to waive the benefits of this article or any part thereof is null and
27 void, and this article shall not deprive any employee or his or her personal representative of any
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1 right or remedy to which he is entitled under the laws of this State.

2 58. As a result of Defendant's unlawful conduct, Plaintiff and aggrieved employees
3 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
4 worked.

5 59. Plaintiff and the Representative aggrieved Employees are entitled to recover
6 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

- 9 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 10 2. For reasonable attorneys' fees and costs; and
- 11 3. For such other and further relief as the Court deems proper.
- 12

13 Dated: December 28, 2023

JAMES HAWKINS APLC

14
15 By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
LAUREN FALK, ESQ.
AVA ISSARY, ESQ.

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19 Attorneys for Plaintiff MONICA MELISSA
20 GUTIERREZ on behalf of the general public
as private attorney general

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EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

October 23, 2023

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

COPAN DIAGNOSTICS, INC. **Agent for
Service of Process:**

CSC – Lawyers Incorporating Service 2710
Gateway Oaks Drive, Suite 150 N
SACRAMENTO CA 95833
Receipt No. 9589 0710 5270 0838 3783 30

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff MONICA MELISSA GUTIERREZ, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and COPAN DIAGNOSTICS, INC., through its Agent for Service of Process (1505 CORPORATION CSC – Lawyers Incorporating Service).

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Riverside County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint