

For All Purposes

ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
05/29/2024
By: Vanessa Minguella,
Deputy Clerk

Kane Moon (SBN 249834)
kmoon@moonlawgroup.com
H. Scott Leviant (SBN 200834)
hsleviant@moonlawgroup.com
Mariam Ghazaryan (SBN 341119)
mghazaryan@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Leonard Cortez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

LEONARD CORTEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

KAWEAH CONTAINER, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: VCU309528

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

Case Management Conference

09/30/2024 08:30 AM - Department 01

To obtain an ADR packet please visit the court's website.

<https://www.tulare.courts.ca.gov/divisions/civil>

TABLE OF CONTENTS

INTRODUCTION & PRELIMINARY STATEMENT.....	1
THE PARTIES	3
A. Plaintiff.....	3
B. Defendants	3
GENERAL ALLEGATIONS.....	5
FIRST CAUSE OF ACTION.....	8
PRAYER FOR RELIEF.....	11

1 Plaintiff Leonard Cortez (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Kaweah Container, Inc. and Does 1
6 through 10 (collectively referred to as “Defendants”) on a representative basis only, for civil
7 penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 et
8 seq. (“PAGA”) stemming from Defendants’ failure to pay minimum and regular rate wages,
9 failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit
10 rest periods, failure to maintain accurate records of hours worked and meal periods, failure to
11 indemnify necessary business expenses, failure to timely pay all wages to terminated employees,
12 and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his or
16 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action on behalf of himself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees other than Plaintiff during the relevant statutes of
25 limitations who are or were harmed by Defendants’ illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking to recover penalties on
27 behalf of the State of California and on behalf of all Aggrieved Employees that worked for
28 Defendants, but not on behalf of Plaintiff via an “individual” PAGA claim. Plaintiff does not

1 seek to recover anything on behalf of the Aggrieved Employees other than penalties as permitted
2 by PAGA at this time. To the extent that statutory violations are mentioned for wage violations,
3 Plaintiff does not seek underlying general and/or special damages for those violations, but simply
4 penalties as permitted by PAGA, declaratory relief, and injunctive relief for all Aggrieved
5 Employees as permitted by the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including Tulare County. As such, and based upon
8 all the facts and circumstances incident to Defendants' business in California, Defendants are
9 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
10 ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants
12 maintained a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, and overtime wages in compliance with the California Labor Code
15 and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to indemnify employees for necessary business expenses incurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
28

the time period specified by California law when employment terminates;
and

(f) Failing to maintain accurate records of the hours that employees worked.

(g) Failing to provide employees with accurate, itemized wage statements
containing all the information required by the California Labor Code and
IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and
constructive notice of the improprieties alleged herein and intentionally refused to rectify their
unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the
unlawful conduct, policies, practices, acts and omissions as described in each and all of the
foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further,
Defendants are responsible for each of the unlawful acts or omissions complained of herein under
the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident that worked for Defendants in the County of
Tulare, State of California, as a general laborer in Tulare County from approximately March
2021 to January 2024.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new
plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
American Savings and Loan Association (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief
alleges, that Defendants are:

(a) Business entities with their principal places of business in Tulare,
California;

- 1 (b) Business entities conducting business in numerous counties throughout the
2 State of California, including in Tulare County; and
- 3 (c) The former employers of Plaintiff, and the current and/or former employers
4 of the Aggrieved Employees. Defendants suffered and permitted Plaintiff
5 and the Aggrieved Employees to work, and/or controlled their wages,
6 hours, or working conditions.

7 12. Plaintiff does not currently know the true names or capacities of the persons or
8 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
9 names. Each of the Doe Defendants was in some manner legally responsible for the damages
10 suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this
11 complaint to set forth the true names and capacities of these Defendants when they have been
12 ascertained, together with appropriate charging allegations, as may be necessary.

13 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
14 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
15 and/or injured a significant number of the Aggrieved Employees in the State of California.

16 14. Plaintiff is informed and believes and thereon alleges that at all relevant times
17 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
18 the other Aggrieved Employees, and exercised control over their wages, hours, and working
19 conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each
20 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
21 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
22 interest of some or all of the other Defendants, and was engaged with some or all of the other
23 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
24 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
25 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
26 within the scope of the relationships alleged above, that each Defendant knew or should have
27 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
28 conduct of all other Defendants.

GENERAL ALLEGATIONS

15. Plaintiff is a California resident who worked for Defendants in the County of Tulare, State of California, as a general laborer during the statutory period. During the statutory period, Defendants classified Plaintiff as a non-exempt employee, and paid Plaintiff and hourly wage.

16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked (including minimum wages and overtime wages), failed to provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

17. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Plaintiff and the Aggrieved Employees were required to work off the clock, and uncompensated. For example, Plaintiff and the Aggrieved Employees were required to wait in line in order to clock into work, off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees received non-discretionary bonuses and other remuneration. However, Defendants failed to incorporate all remuneration when calculating the correct overtime rate of pay, meal break premium rate of pay, and sick day rate of pay, leading to underpayment.

18. Throughout the statutory period, Defendants have wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,

1 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also failed to
2 accurately record meal periods. Accordingly, Defendants' policy and practice was to not provide
3 meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

4 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
5 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
6 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
7 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
8 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
9 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
10 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
11 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
12 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
13 the Class, nor did Defendants have adequate policies or practices regarding the timing of rest
14 periods. Defendants also did not have adequate policies or practices to verify whether Plaintiff
15 and the Aggrieved Employees were taking their required rest periods. Further, Defendants did
16 not maintain accurate records of employee work periods, and therefore Defendants cannot
17 demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of
18 each work period. Accordingly, Defendants' policy and practice was to not authorize and permit
19 Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

20 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
21 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
22 Defendants without reimbursement, such as the purchase of tools such as blades, vests, hand
23 tools, drills, impact guns, and masks. Also, Plaintiff and the Aggrieved Employees were required
24 to use their own personal cellular telephones for work purposes, without reimbursement.

25 21. Throughout the statutory period, Defendants willfully failed and refused to timely
26 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
27 all minimum wages, overtime wages, meal period premium wages, and rest period premium
28 wages.

1 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
2 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
3 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
4 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
5 provided in accordance with California law, correct wages for rest periods that were not
6 authorized and permitted to take in accordance with California law, and Defendant's address).
7 Further, the wage statements do not show Defendant's address as required by California law. As
8 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
9 Employees suffered injury because, among other things:

- 10 (a) the violations led them to believe that they were not entitled to be paid
11 minimum wages, overtime wages, meal period premium wages, and rest
12 period premium wages to which they were entitled, even though they were
13 entitled;
- 14 (b) the violations led them to believe that they had been paid the minimum,
15 overtime, meal period premium, and rest period premium wages, even
16 though they had not been;
- 17 (c) the violations led them to believe they were not entitled to be paid
18 minimum, overtime, meal period premium, and rest period premium wages
19 at the correct California rate even though they were;
- 20 (d) the violations led them to believe they had been paid minimum, overtime,
21 meal period premium, and rest period premium wages at the correct
22 California rate even though they had not been;
- 23 (e) the violations hindered them from determining the amounts of minimum,
24 overtime, meal period premium, and rest period premium owed to them;
- 25 (f) in connection with their employment before and during this action, and in
26 connection with prosecuting this action, the violations caused them to have
27 to perform mathematical computations to determine the amounts of wages
28

owed to them, computations they would not have to make if the wage statements contained the required accurate information;

- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wages rates to which Plaintiff and the Aggrieved Employees were entitled, and Plaintiff and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

23. Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California Labor Code § 226(e), including actual damages.

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

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

25. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

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

27. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On March 10, 2024, Plaintiff gave written notice by online filing to the Labor

1 and Workforce Development Agency and by certified mail to Defendants of the specific
2 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
3 former aggrieved employees, including the facts and theories to support the violations (See
4 attached as **Exhibit A**). Plaintiff's PAGA case number is LWDA-CM-1015841-24. At the time
5 of filing, more than 65 days has elapsed since Plaintiff provided notice, but the Labor and
6 Workforce Development Agency has not indicated that it intends to investigate Defendants'
7 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
8 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
9 the Labor Code described in this Complaint. These penalties include, but are not limited to,
10 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

11 28. In addition, Plaintiff seeks penalties on behalf of the Aggrieved Employees for
12 Defendants' violation of California Labor Code § 1174(d). Pursuant to California Labor Code §
13 1174.5, any person, including any entity, employing labor who willfully fails to maintain
14 accurate and complete records required by California Labor Code § 1174 is subject to a penalty
15 under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time
16 records showing when the employee begins and ends each work period. Meal periods, and total
17 hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order §
18 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates
19 of pay.

20 29. During the time period of employment for Plaintiff and the Aggrieved Employees,
21 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
22 maintain accurate records showing meal periods, and accurate records showing when employees
23 begin and end each work period. Defendants' failure to provide and maintain records required by
24 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
25 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
26 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
27 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
28 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved

1 Employees have suffered and continue to suffer, substantial losses related to the use and
2 enjoyment of such wages, lost interest on such wages and expenses and attorney’s fees in seeking
3 to compel Defendants to fully perform its obligation under state law, all to their respective
4 damage in amounts according to proof at trial. Because of Defendants’ knowing failure to
5 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
6 Employees have also suffered an injury in that they were prevented from knowing,
7 understanding, and disputing the wage payments paid to them.

8 30. For purposes of this Complaint, Plaintiff utilizes the terms “individual” and “non-
9 individual” PAGA claims in accordance with the utilization of those terms in *Viking River*
10 *Cruises, Inc. v. Moriana*, 596 U.S. — [142 S.Ct. 1906], 213 L.Ed.2d 179 (2022) (*Viking River*)
11 and *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104, 1113 (2023) (*Adolph*). Plaintiff, as the
12 individual authorized by the PAGA statute to act on behalf of the State of California in seeking to
13 recovery civil penalties via PAGA, will not assert or seek to recover any civil penalties pursuant
14 to PAGA for Plaintiff’s “individual” PAGA claim, instead electing to pursue only the separate
15 “non-individual” PAGA claim for Aggrieved Employees (i.e., every “aggrieved employee” other
16 than Plaintiff, as the term “aggrieved employee” is used in PAGA and interpreting decisional
17 authority and defined above to include all aggrieved employees *other than Plaintiff*). This
18 election is without prejudice. Because *Adolph* explicitly holds that an individual remedy is
19 unnecessary to possess standing to pursue PAGA penalties, it necessarily follows that Plaintiff is
20 not obligated to seek any individual remedy, in the form of any “individual” PAGA penalties, to
21 possess standing to pursue PAGA penalties for fellow employees:

22 As *Kim* and *Johnson* make clear, a worker becomes an “aggrieved employee” with
23 standing to litigate claims on behalf of fellow employees upon sustaining a Labor
24 Code violation committed by his or her employer. (See *Kim*, *supra*, 9 Cal.5th at
25 pp. 84–85, 259 Cal.Rptr.3d 769, 459 P.3d 1123; *Johnson*, *supra*, 66 Cal.App.5th at
26 p. 930, 281 Cal.Rptr.3d 478; § 2699, subd. (c).) Standing under PAGA is not
27 affected by enforcement of an agreement to adjudicate a plaintiff’s individual
28 claim in another forum. Arbitrating a PAGA plaintiff’s individual claim does not
nullify the fact of the violation or extinguish the plaintiff’s status as an aggrieved
employee, any more than the time-barring of remedies did in *Johnson* or the
settlement of the individual damages claims did in *Kim*. (See *Kim*, at pp. 84–85,
259 Cal.Rptr.3d 769, 459 P.3d 1123; *Johnson*, at p. 930, 281 Cal.Rptr.3d 478.)
The operative complaint alleges that Adolph experienced Labor Code violations
while driving for Uber. Under *Kim*, Adolph’s allegations that Labor Code

violations were committed against him while he was employed by Uber suffice to confer standing to bring a PAGA action.

Adolph, 14 Cal. 5th at 1121. Plaintiff, as the “master of the complaint,” has determined that “individual” PAGA remedies will not be sought at this time and an “individual” PAGA claim will not be brought at this time. *Aryeh v. Canon Bus. Sols., Inc.*, 55 Cal. 4th 1185, 1202, (2013) (“Aryeh is the master of his complaint, and we must accept his allegations at face value.”). Plaintiff has alleged employment by Defendants. Plaintiff has alleged conduct violative of the Labor Code that falls within the ambit of PAGA. That is sufficient to confer standing to proceed upon Plaintiff, and Plaintiff cannot be forced by Defendants to assert any claim that Plaintiff chooses not to pursue. In this instance, Plaintiff expressly declares without prejudice that the “individual” PAGA claim will not be brought (and associated penalties will not be requested), thereby eliminating from this action any claim subject to any arbitration agreement.

31. Based on the conduct described in this Complaint, Plaintiff is entitled to recover civil penalties on behalf of the State of California and the Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

32. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs pursuant to Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum and overtime time wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to furnish accurate wage statements, and failing to maintain accurate records of all hours worked and meal periods;

2. An award of civil penalties on behalf of Aggrieved Employees pursuant to PAGA;

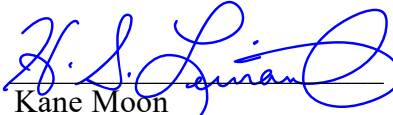
3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4. Attorneys' fees and costs reasonably incurred;
5. Injunctive and declaratory relief to the extent allowed by PAGA; and
6. Such other and further relief that the Court deems proper.

Dated: May 29, 2024

Respectfully submitted,

MOON LAW GROUP, PC

By:



Kane Moon

H. Scott Leviant

Mariam Ghazaryan

Attorneys for Plaintiff LEONARD CORTEZ