

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Sahag Majarian, II, Esq. SBN 146621
Sahagii@aol.com
LAW OFFICES OF SAHAG MAJARIAN II
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff,
Carlos Daniel Torres, on behalf of
himself and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Carlos Daniel Torres, an individual, on
behalf of herself and all aggrieved
employees,

Plaintiffs,

vs.

Ralphs Grocery Company, an Ohio
corporation, Food 4 Less of California,
Inc., a California Corporation; Food 4 Less
of Southern California, Inc., a Delaware
corporation, and The Kroger Co., an Ohio
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.:

20STCV12856

REPRESENTATIVE ACTION

COMPLAINT

**Violation of the Private Attorneys
General Act of 2004, Cal. Labor Code
§2698 et seq.**

1 Plaintiff Carlos Daniel Torres, on behalf of himself, the State of California, and all
2 aggrieved employees, brings this PAGA representative action complaint and alleges as
3 follows:

4 **NATURE OF THE ACTION**

5 1. This is an Action brought pursuant to Labor Code §2698 *et seq.*, on behalf of
6 the State of California, Plaintiff and the following group of individuals: All hourly
7 employees who were employed by Defendants within the State of California who worked
8 one or more pay periods at least one (1) year prior to the date of the letter sent to the
9 Labor Workforce Development Agency and Defendant giving notice of these PAGA
10 claims and continuing to the present (hereafter “aggrieved employees”).

11 2. Defendants failed to comply with California Labor Code requirements due to
12 erroneous, willful and intentional employment practices and policies. Prior to bringing
13 this PAGA action, Plaintiff provided notice of the claims pursuant to §2698 *et seq.*, to
14 the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the
15 attached Exhibit. The LWDA has not provided any notice to Plaintiff following the
16 exhaustion of the required notice period required by 2699.3(a)(2)(B). Accordingly,
17 Plaintiff now brings this Complaint for civil penalties under the Private Attorneys
18 General Act (“PAGA”), Labor Code §2698 *et seq.*

19 3. Defendants have had a consistent policy and/or practice of: (1) failure to pay for
20 all hours worked, including overtime hours worked, at the lawful rate; (2) failure to
21 provide suitable seating; (3) failure to timely pay all wages owed, including willfully
22 failing to pay wages due upon termination and failure to pay all wages owed twice per
23 month; and (4) failure to provide accurate itemized wage statements. Defendants are
24 therefore liable for civil penalties under the Cal. Labor Code, including the Private
25 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully
26 herein.

27 ///
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5

6
7
8

9
0
1

2
3
4

5
6
7

8
9
10
11
12
13

24
25
26
27
28

1 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
2 each Defendant is legally attributable to the other Defendants.

4 **JURISDICTION AND VENUE**

5 14. Venue is proper in this judicial district because Defendants conduct business in
6 this county and each Defendant has legal obligations to Plaintiff and many of the
7 aggrieved employees in this case that arose in this county.

8 15. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional
9 limits of the Superior Court and will be established according to proof at trial. Based on
10 information, investigation and analysis, Plaintiff alleges that the amount in controversy,
11 including claims for monetary damages, penalties and attorney's fees is more than
12 twenty-five thousand dollars (\$25,000).

13 16. The California Superior Court has jurisdiction in this matter because Plaintiff
14 is a resident of California and Defendants are incorporated in and/or qualified to do
15 business in California and regularly conduct business in California. Further, there is no
16 federal question at issue as the claims herein are based solely on California law.

17 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

18 17. This is a representative action, pursuant to Labor Code §2698 *et seq.*, on behalf
19 of the following individuals: All persons who are employed or have been employed as an
20 hourly, nonexempt employee of Defendants in the state of California who worked one or
21 more pay periods since one (1) year prior to the date of the letter sent to the Labor
22 Workforce Development Agency and Defendants giving notice of these PAGA claims and
23 continuing to the present. (hereafter "aggrieved employees").

24 18. During the relevant time-period, Defendants committed various violations of
25 the California Labor Code as alleged below in more detail. Defendants enforce multiple
26 policies that violate state law, which are intended to increase profits to the detriment of
27 aggrieved employees.

1 19. This representative action represents hundreds of current and former aggrieved
2 employees, earning at or near minimum wage.

3 20. This action is ideally suited and manageable as a PAGA representative action.
4 The identities of the aggrieved employees can be ascertained by reviewing existing
5 business records. For example, the identities of the aggrieved employees who were not
6 properly paid all wages owed can be ascertained by reviewing Defendants' timecards and
7 wage statements. The same is true for the identities of aggrieved employees who
8 experienced seating violations and pay stub violations. Documentary evidence in
9 Defendants' possession identifies both the employee and the damages owed. The
10 identities of the aggrieved employees who did not receive accurate wage statements can
11 be determined by reviewing the wage statements themselves.

12 21. Defendants, and each of them, have committed the following violations of the
13 California Labor Code:

14 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

15 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

16 22. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

18 23. Section 2(G) of Wage Order 7 defines "hours worked" as "the time during which an
19 employee is subject to the control of an employer, and including all the time the employee is
20 suffered or permitted to work, whether or not required to do so." Plaintiff and aggrieved employees
21 were not paid for all hours worked, including overtime hours worked because of Defendants'
22 policy of shaving timecard entries due to rounding.

23 24. Time Shaving and Rounding. Defendants round employee timecard entries to the
24 nearest 6 minutes, although Defendants use high-tech timeclocks that easily capture the exact
25 minute employees present for work.

26 25. The California Supreme Court has rejected the *de minimis* argument frequently echoed
27 by employers, confirming that employees are entitled to payment for all hours (and minutes)
28 worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair

1 and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time,
2 in failure to compensate the employees properly for all the time they have actually worked.’”
3 (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210
4 Cal.App.4th at p. 907.) The policy utilized by Defendants is neither fair nor neutral, as it
5 consistently shaved time from Plaintiff and aggrieved employees’ hours worked, and it
6 consistently favored the employer, resulting in a failure to compensate Plaintiff and aggrieved
7 employees for all hours and overtime hours worked.

8 26. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay Plaintiff
9 and aggrieved employees for all hours worked as a result of Defendants’ timecard rounding and
10 time shaving practices. Based on Defendants’ unlawful conduct described above, and because
11 Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants’ failure to
12 pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage
13 for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 7-2001
14 9(A)(1). Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

15 27. Failure to Pay Overtime Wages. Defendants have required, as a result of the practices
16 alleged herein, Plaintiff and others to work hours in excess of eight hours in a day and forty in a
17 week, but has not paid these employees overtime compensation at one and one-half times the
18 regular rate of pay in violation of Labor Code §510. Further, Plaintiff and aggrieved employees
19 have been required to work more than 12 hours in one day without being compensated at a rate of
20 twice the regular rate of pay. §510. As a result, Plaintiff and aggrieved employees have been denied
21 “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor
22 Code. §1194. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et*
23 *seq.*

24 **Failure To Provide Suitable Seating**

25 28. Labor Code § 1198 states, in pertinent part, “The employment of any
26 employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”
27
28

1 29. IWC Wage Order 7-2001 §14 (A) provides that all working employees shall
2 be provided with suitable seats when the nature of the work reasonably permits the use of
3 seats.

4 30. IWC Wage Order 7-2001 §14 (B) when employees in active duties
5 employment and the nature of the work requires standing, an adequate number of suitable
6 seats shall be permitted to use such seats when it does not interfere with the performance
7 of their duties.

8 31. Defendant failed to provide Plaintiff and aggrieved employees with suitable
9 seating during their employment as required by section 14 of the applicable Wage Order.
10 For example, Plaintiff and other aggrieved employees were not provided with seating
11 during shifts in which they worked at the meat and deli counters, as a cashier, or other
12 positions which would reasonably permit the use of seating.

13 32. Upon information and belief, the work performed at the meat and deli counters
14 includes customer service, weighing and labeling items, and other common tasks that can
15 be performed while seated and the location of the tasks to be performed made it feasible
16 to do so while seated.

17 33. Plaintiff alleges that the work performed by a cashier includes, but is not
18 limited to, cashiering, providing customer service, and other common tasks which could
19 be performed while seated and the location of the tasks to be performed made it feasible
20 to do so while seated.

21 34. As a result of these violations, Defendants are liable for civil penalties
22 pursuant to Cal. Labor Code §2698 *et seq.*, and all available remedies to the extent
23 allowed by law for the alleged violations.

24 **Failure to Timely Pay All Wages Owed**

25 35. At the conclusion of Plaintiff's employment, Plaintiff was not paid in a timely
26 fashion all wages due, as required by Labor Code §203. Plaintiff is informed and
27 believes, and based thereon alleges, that the other aggrieved employees who separated
28

1 from the company, whether voluntary or involuntary, were also denied payment of wages
2 in a timely manner, including overtime, as required by §203.

3 36. As set forth above, due to Defendant's unlawful employment practices,
4 Defendant knowingly and willfully failed to pay all compensation, including penalty
5 wages, due and owing to Plaintiff at the time employment terminated.

6 37. Defendant willfully failed to pay aggrieved employees who are no longer
7 employed by Defendant all compensation due upon termination of employment required
8 by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256.

9 38. Plaintiff and aggrieved employees are now also entitled to recover up to thirty
10 (30) days of wages due to Defendant's "willful" failure to comply with the statutory
11 requirements of §§201 and 202 of the Labor Code.

12 39. Failure to Pay All Wages Owed Twice Per Month. Pursuant to Labor Code
13 §204(a) Defendant was required to pay Plaintiff and aggrieved employees all wages
14 earned twice during each calendar month. Defendant failed to pay all wages earned to
15 employees as a result of the unlawful employment policies and practices. Plaintiff and
16 aggrieved were underpaid for hours worked, including penalty wages, and this
17 underpayment resulted in a failure to pay all wages owed twice per month.

18 40. As a result of these practices Defendant has violated §§201-204 and 256.
19 Defendant is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.* Plaintiff
20 also seeks attorneys' fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

21 **Failure to Provide Accurate Itemized Wage Statements**

22 41. California Labor Code § 226(a) provides that "[e]very employer shall,
23 semimonthly or at the time of each payment of wages, furnish each of his or her
24 employees...an accurate itemized statement in writing showing (1) gross wages earned,
25 (2) total hours worked..., (3) the number of piece-rate units earned and any applicable
26 piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net
27 wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the
28 name of the employee and his or her social security number..., (8) the name and address

1 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
2 the pay period and the corresponding number of hours worked at each hourly rate by the
3 employee.” (Emphasis added.)

4 42. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of
5 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
6 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
7 per employee for each violation in a subsequent citation, for which the employer fails to
8 provide the employee a wage deduction statement or fails to keep the records required in
9 subdivision (a) of Section 226. The civil penalties provided for in this section are in
10 addition to any other penalty provided by law.”

11 43. Labor Code § 1174 provides that “[e]very employer employing labor in this
12 state shall ... (c) [k]eep a record showing the names and addresses of all employees
13 employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at
14 the plants or establishments at which employees are employed, payroll records showing
15 the hours worked daily by and the wages paid to, and the number of piece-rate units
16 earned by and any applicable piece rate paid to, employees employed at the respective
17 plants or establishments. These records shall be kept in accordance with rules established
18 for this purpose by the commission, but in any case, shall be kept on file for not less than
19 two years.”

20 44. Defendant is liable for civil penalties under §226.3 for violation of §226(a).
21 Plaintiff alleges on information and belief that Defendants knowingly and intentionally
22 failed to furnish aggrieved employees with accurate itemized statements for each pay
23 period that they worked and failed to maintain accurate payroll records of the aggrieved
24 employees as mandated by Labor Code § 226. Defendants failed to issue wage statements
25 that have accurately reflected actual gross wages earned, regular, overtime and total hours
26 worked.

27 45. Because Plaintiff’s pay stubs are prepared by Defendants, upon information
28 and belief, Plaintiff alleges that Defendants issued inaccurate paystubs to all aggrieved

1 employees. As a result of these violations, Defendants are liable for civil penalties
2 pursuant to Cal. Labor Code §§226.3, 558, 1174.5, and 2698 et. seq. Plaintiff also seeks
3 attorneys' fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

4 46. Through this representative action, Plaintiff will advance the interests of
5 hundreds of current and former employees, such that joinder is impracticable. These
6 current and former employees can be readily identified through a review of Defendants'
7 payroll records and the records of the company that handles payroll for Defendants.

8 47. Plaintiff seeks to recover the PAGA civil penalties through a representative
9 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
10 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
11 is not required.

12 **FIRST CAUSE OF ACTION**

13 **Against All Defendants for Violation of the Private Attorneys General Act**

14 **("PAGA")**

15 **(California Labor Code §2699 et seq.)**

16 48. Plaintiff reasserts and incorporates the paragraphs referenced above as if fully
17 set forth herein.

18 49. Plaintiff and her non-exempt, hourly coworkers are "aggrieved employees"
19 under PAGA, as they were employed by Defendants during the applicable statutory
20 period and suffered one or more of the Labor Code violations set forth herein.
21 Accordingly, they seek to recover on behalf of themselves and all other current and
22 former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus
23 reasonable attorneys' fees and costs.

24 50. Plaintiff seeks to recover the PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
26 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
27 is not required.
28

1 51. As more fully set forth above and expressly incorporated herein, Plaintiff
2 seeks civil penalties pursuant to PAGA for violations of the following Labor Code
3 provisions:

4 a. Failure to pay all hours worked, including overtime hours worked, in
5 violation of Labor Code §218, 510, 558, 1194, 1197, 1197.1, 1198 and Wage Order 7;

6 b. failure to provide proper and adequate seating in violation of Labor Code
7 §1198 and Wage Order 7-2001, §14;

8 c. failure to pay the legally required minimum wage in violation of Labor
9 Code §1182.12, 1194, 1197, 1198 and 2698 et seq;

10 d. failure to timely pay all wages owed in violation of Labor Code §§201-203,
11 2698 et seq;

12 e. failure to timely pay all wages owed twice per calendar month in violation
13 of Labor Code §204; and

14 f. failure to furnish and maintain accurate payroll records in violation of
15 Labor Code §226(a) and 246(i).

16 52. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes
17 a civil penalty in addition to any other penalty provided by law of two hundred fifty
18 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars
19 (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

20 53. With respect to violations of Labor Code §§227.3, 510 and 512, Labor Code
21 §558 imposes a civil penalty in addition to any other penalty provided by law of fifty
22 dollars (\$50) for initial violations for each underpaid employee for each pay period for
23 which the employee was underpaid in addition to an amount sufficient to recover
24 underpaid wages, and one hundred dollars (\$100) for subsequent violations for each
25 underpaid employee for each pay period for which the employee was underpaid in
26 addition to an amount sufficient to recover underpaid wages. Moreover, although
27 Plaintiff is not seeking unpaid wages pursuant to §558, Plaintiff seeks civil penalties
28 pursuant to Labor Code §558(a)(1-2).

1 54. Labor Code §1194 permits “any employee receiving less than the legal
2 minimum wage or the legal overtime compensation applicable to the employee is entitled
3 to recover in a civil action the unpaid balance of the full amount of this minimum wage
4 or overtime compensation, including interest thereon, reasonable attorney’s fees, and
5 costs of suit.”

6 55. With respect to violations of Labor Code §1197.1, employers are liable for
7 “one hundred dollars (\$100) for each underpaid employee for each pay period for which
8 the employee is underpaid... and two hundred fifty dollars (\$250) for each underpaid
9 employee for each pay period for which the employee is underpaid regardless of whether
10 the initial violation was intentionally committed.” Labor Code §1197.1(a)(1-2).

11 56. With respect to violations of Labor Code §218, Labor Code §218.5 (a) states,
12 “In any action brought for the nonpayment of wages, fringe benefits, or health and
13 welfare or pension fund contributions, the court shall award reasonable attorney’s fees
14 and costs to the prevailing party if any party to the action requests attorney’s fees and
15 costs upon the initiation of the action.” Plaintiff demands attorney’s fees and costs in
16 connection with the claims herein.

17 57. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars
18 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred
19 dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all
20 Labor Code provisions for which a civil penalty is not specifically provided.

21 58. Plaintiff and the other current and former employees of Defendants are
22 aggrieved employees. They were or are employed by Defendants, and each of them, and
23 the violations alleged herein were committed against them. Plaintiff brings this action on
24 behalf of himself, the State of California, and all other current and former aggrieved
25 employees.

26 59. At the time of each violation, Defendants employed one or more employees.
27
28

60. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

61. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the attached notice letter, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDS and Defendants of the specific Labor Code that Defendants have violated. The LWDS did not respond to Plaintiff’s notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the State of California and all aggrieved employees, prays for judgement against Defendants as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code §§ 226.3, 558, 1197.1, and 2698 *et seq.*, in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §218.5, 558, 1194, and 2699(g) and/or other applicable Labor Code sections and laws;
3. Pre-judgment and post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

DATED: April 1, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**

~~By 2~~

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff Carlos Daniel Torres
and all aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 27, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Ralphs Grocery Company
1100 West Artesia Blvd.
Compton, CA 90220

Ralphs Grocery Company
1014 Vine Street
Cincinnati, OH 45202

The Kroger Co.
1014 Vine Street
Cincinnati, OH 45202

Food 4 Less of California, Inc.
1100 West Artesia Blvd.
Compton, CA 90220

Food 4 Less of Southern California,
Inc.
1100 West Artesia Blvd.
Compton, CA 90220

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: Carlos Daniel Torres
Employer: Ralphs Grocery Company, Food 4 Less of California, Inc.,
Food 4 Less of Southern California, Inc., The Kroger Co.,

Dear Sir or Madam:

Carlos Torres ("Claimant") has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employers, Ralphs Grocery Company, Food 4 Less of California, Inc., Food 4 Less of Southern California,

Inc., and The Kroger Co., which operate grocery stores throughout California (hereafter "Employer.")

Employer operates hundreds of full-service grocery stores throughout California. Claimant worked for Employer as a meat clerk until February 2, 2019. Claimant's proposed PAGA representative action would represent numerous aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Section 2(G) or Wage Order 7 "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so."

Here, Claimant and aggrieved employees were not paid for all hours worked because of Employer's policy of shaving timecard entries due to rounding. Employer rounds employee timecards to the nearest 6 minutes, although Employer uses timeclocks that capture the exact minute employees present for work. For example, as illustrated by the screenshot of Claimant's time punch entries, below, on 1/26/2019 and 1/29/2019, Claimant was not paid for 3 minutes of time worked on each shift.

Work Dept: MEATCLK MEAT-CLERK

DAY	DATE	---ROUNDED---		DAILY	NOTES	---ACTUAL---		---SCHEDULED---		PAY CODE	SHIFT HOURS
		IN	OUT			IN	OUT	IN	OUT		
THU	1/24/19	614P	1001P	MF4LD	M	614P	1001P		1000P		8.10
SAT	1/26/19	227P	649P	U MF4LD		227P	649P	230P			
				E							
SAT	1/26/19	719P	1000P	MF4LD	M	719P	1000P		1000P		7.00
MON	1/28/19	330P	732P	U MF4LD		330P	732P	330P			
				E							
MON	1/28/19	803P	1001P	MF4LD	M	803P	1001P		1000P		6.00
TUE	1/29/19	330P	729P	U MF4LD		330P	729P	330P			
				E							
TUE	1/29/19	759P	1000P	MF4LD	M	759P	1000P		1000P		6.00
THU	1/31/19	1131A	417P	E MF4LD		1131A	417P	100P			
THU	1/31/19	447P	811P	L MF4LD	M	447P	811P		500P		8.20
SAT	2/02/19	230P	613P	U MF4LD		230P	613P	230P			
				"							

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

When employees like Claimant and his coworkers earning at or near minimum wage do not receive payment for all hours worked, including as a result of Employer’s rounding practice, the result is that they are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 7-2001 9(A)(1). Employer has been engaged in many unlawful employment practices which resulted in failure to pay minimum wage for all hours worked each pay period

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 7-2001, section 14)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 14 of the applicable Wage Order provides that:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use

such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. For example, Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at the meat and deli counters, as a cashier, or other positions which would reasonably permit the use of seating. Upon information and belief, the work performed at the meat and deli counters includes customer service, weighing and labeling items, and other common tasks that can be performed while seated and the location of the tasks to be performed made it feasible to do so while seated. Moreover, Claimant alleges upon information and belief that the work performed by a cashier includes, but is not limited to, cashing, providing customer service, and other common tasks which could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

Accordingly, Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all minimum wages owed to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of unpaid minimum wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201-203 and 256, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of minimum wages in a timely manner as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation of §203 and

§256 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all minimum wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for all minimum wages owed, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Accurate Itemized Wage Statements
(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned and total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the correct gross wages earned, net wages earned, and total hours worked.

Employer also failed to maintain duplicate copies of paystubs. Duplicate copies maintained by Employer fail to state the correct hourly rate because hourly rate listed is misleading as it lacks the decimal point. The total hours worked category is also missing, as are the pay beginning and end dates. Finally, duplicate copies list the employee's entire SSN. Employer has an affirmative obligation to maintain copies of employment records, and the only employment records produced to Claimant have been noncompliant wage statements. Wage statements issued to Claimant and aggrieved employees have been defective because they failed to list total hours worked, pay beginning and end dates, and they listed the full employee SSN.

Employer issued and maintained inaccurate wage statements and records. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

cc:

Sahag Majarian, Esq.

Law Offices of Sahag Majarian II

18250 Ventura Blvd.

Tarzana, CA 91356