

ENDORSED
FILED
San Francisco County Superior Court

MAR 25 2020

CLERK OF THE COURT
BY: ANGELICA SUNGA
Deputy Clerk

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for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

SHAILAZ MODY, on behalf of herself and
as representative for the State of California
on behalf of all other aggrieved employees,

Plaintiffs,

v.

CVS PHARMACY, INC., a Rhode Island
Corporation; GARFIELD BEACH CVS,
L.L.C., a California Corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No. **CGC - 20 - 583946**

**REPRESENTATIVE ACTION COMPLAINT
FOR CIVIL PENALTIES, PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

1. PAGA Civil Penalties for Failure to Pay Minimum, Regular and Overtime Wages
2. PAGA Civil Penalties for Failure to Provide Meal Periods
3. PAGA Civil Penalties for Failure to Provide Rest Periods
4. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
5. PAGA Civil Penalties for Failure to Timely Pay All Wages Due Upon Termination
6. PAGA Civil Penalties for Failure to Maintain Accurate Payroll Records

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

1 Plaintiff SHAILAZ MODY, on behalf of herself and as representative for the State of
2 California on behalf of all other aggrieved employees, alleges:

3 **INTRODUCTION**

4 1. SHAILAZ MODY (“Plaintiff”) brings this representative action against CVS
5 PHARMACY, INC., GARFIELD BEACH CVS, L.L.C., and DOES 1 through 10, inclusive
6 (“CVS” or “Defendants”) to recover civil penalties arising out of Defendants’ multiple labor
7 code violations including failure to pay all wages, meal and rest period premiums, wage
8 statement violations, waiting time penalties, and maintain accurate payroll records.

9 2. Plaintiff gave notice of these claims to the California Labor and Workforce
10 Development Agency (“LWDA”) on January 13, 2020. There was no LWDA intervention
11 within 65 days of that notice, and no notice of cure by Defendants. Plaintiff is an aggrieved
12 employee with standing to bring a representative action on behalf of the State, and LWDA and
13 as a private attorney general. Labor Code § 2699.3. (See Exhibit 1).

14 3. Plaintiff asserts claims for civil penalties as a representative of the State of
15 California, as authorized by the Private Attorneys General Act (“PAGA”), and to the extent
16 permitted by law, on behalf of aggrieved employees who held the positions identified and
17 suffered one or more of the violations alleged. Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

18 4. Plaintiff seeks to represent all current and former non-exempt Supervisors and
19 Assistant Managers of Defendants who suffered one or more of the alleged violations
20 (“aggrieved employees”) during the period one year and 65 days before this Complaint is filed
21 until the start of trial in this matter (“PAGA Period”).

22 **JURISDICTION AND VENUE**

23 5. Venue as to each Defendant is proper in this judicial district. Code of Civil
24 Procedure § 395. Defendants conduct business and commit Labor Code violations which have a
25 direct effect on aggrieved employees in San Francisco County and California, and each
26 Defendant or DOE is within California for service of process.

27 6. Plaintiff’s claims raise no federal question, and PAGA civil penalty actions are
28 not subject to federal jurisdiction.

PARTIES

7. SHAILAZ MODY is a resident of California and from August 2017 through April 2019, was a CVS Shift Supervisor Trainee and Shift Supervisor in San Francisco.

8. Plaintiff is informed, believes, and alleges Defendant CVS PHARMACY, INC. is a Rhode Island Corporation and has conducted business, and employed Plaintiff and other aggrieved employees during the PAGA Period, in the County of San Francisco.

9. Plaintiff is informed, believes, and alleges Defendant GARFIELD BEACH CVS, L.L.C. is a California Corporation and has conducted business, and employed Plaintiff and other aggrieved employees during the PAGA Period, in the County of San Francisco.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues Defendants by fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and alleges, each DOE Defendant is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE Defendants when they become known.

11. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

12. During the PAGA Period, Defendants employed Plaintiff and other aggrieved employees in San Francisco County and in California as non-exempt Supervisors and Assistant Managers who function as “key carriers” and committed the violations described below.

13. Responsibilities for Plaintiff and other aggrieved employees functioning as “key carriers” include assisting Store Managers, opening and closing stores, turning alarms on and off, opening safes and change drawers to issue money for cash registers, opening cash registers and depositing change for the start of shifts, and removing cash from drop boxes under registers and depositing cash into safes at appropriate times. They are also responsible for accessing, inputting and retrieving employee and store data through Defendants’ computer systems.

1 14. Plaintiff and other aggrieved employees must remain available to perform
2 “overrides” at cash registers, such as voiding sales, accepting or declining coupon’s, accepting
3 or declining checks, and processing and issuing certain refunds. If Store Managers are not
4 available, many transactions must be dealt with immediately by Plaintiff and other aggrieved
5 employees in order to provide the customer service required by Defendants and prevent backed
6 up register lines, delayed checkouts, and inconveniencing and upsetting customers.

7 15. At times there is only one Manager or “key carrier,” such as Plaintiff or other
8 aggrieved employees, in a store and one cashier. When Plaintiff and other aggrieved employees
9 are in that situation, they are unable to leave the store or take a meal or rest break.

10 16. Plaintiff and other aggrieved employees worked shifts of over ten, and at times,
11 over twelve hours. They were not provided all duty-free thirty-minute meal periods for shifts of
12 five hours or more, starting before the end of the fifth hour of work, or paid one hour of pay at
13 their regular rate in lieu of a meal period not provided.

14 17. Although Plaintiff and other aggrieved employees were not provided with all
15 compliant meal periods, Defendants’ automatically recorded compliant 30-minute meal periods.

16 18. Plaintiff and other aggrieved employees were not authorized or permitted all paid
17 ten-minute rest periods for work periods of four (4) hours or major fractions, or paid one hour of
18 pay at their regular rate of pay in lieu of rest periods not authorized or permitted.

19 19. Defendants knowingly and willfully failed to provide accurate itemized wage
20 statements to Plaintiff and aggrieved employees, because, they did not include, among other
21 things, total hours worked, all applicable hourly rates in effect during the pay period, and the
22 corresponding number of hours worked at each hourly rate.

23 20. Defendants had a policy and practice of failing to timely pay Plaintiff and
24 aggrieved employees all wages owed during employment, and, as a result, failed to pay all
25 wages due upon separation of employment.

26 21. By forcing Plaintiff and aggrieved employees to work off the clock, including by
27 forcing them to work while clocked out for meals, Defendants did not keep required records
28 showing daily hours worked and wages earned by Plaintiff and aggrieved employees.

22. Plaintiff, as a representative of general public and the State of California, seeks to invoke Labor Code section 1195.5: “The Division of Labor Standards Enforcement shall determine, upon request, whether the wages of employees, which exceed the minimum wages fixed by the commission, have been correctly computed and paid. For this purpose, the division may examine the books, reports, contracts, payrolls and other documents of the employer relative to the employment of employees. The division shall enforce the payment of any sums found, upon examination, to be due and unpaid to the employees.”

23. Plaintiff, representing the general public and the State, seeks all penalties under Labor Code sections 2699(a) and (f)(2) for violations of sections 201-204, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1197.1, in an amount according to proof, as to penalties otherwise only available in public agency enforcement actions. Recovered funds will be distributed in accordance with PAGA - 75% of net penalties distributed to the LWDA and 25% distributed to aggrieved employees, subject to Court approval.

FIRST CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PAY MINIMUM, REGULAR,
AND OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

24. Plaintiff incorporates the preceding paragraphs of this Complaint.

25. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1194(a).

26. “[A]ny 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.” Labor Code § 2699(a).

27. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.” Labor Code § 2699(f)(2).

28. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

29. Defendants failed to pay minimum, regular, and overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

30. Defendants’ conduct violates Wage Order 4-2001, by failing to pay minimum wages to employees. Plaintiff will also seek \$50 for the initial pay period an employee was underpaid, and \$100 for each subsequent violation.

SECOND CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE MEAL PERIODS
(AGAINST ALL DEFENDANTS)

31. Plaintiff incorporates the preceding paragraphs of this Complaint.

32. By failing to provide duty-free meal periods of at least 30 minutes for shifts of five hours or more, which began before the end of the fifth hour of work, and a second meal period at least 30 minutes for shifts of ten hours or more, which began before the end of the tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 4-2001.

33. By failing to pay employees one hour of pay at their regular rate of compensation for each workday a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512, and Wage Order 4-2001.

34. During the PAGA Period, Defendants failed to provide compliant meal periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code section 2699(f)(2).

THIRD CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE REST PERIODS
(AGAINST ALL DEFENDANTS)

35. Plaintiff incorporates the preceding paragraphs of this Complaint.

36. By failing to authorize and permit Plaintiff a rest period of at least 10 minutes for every four (4) hours or major fraction thereof worked per day, Defendants willfully violated provisions of Labor Code section 226.7 and Wage Order No. 4-2001.

37. By failing to provide one hour of pay at their regular rate of compensation when rest periods were not permitted or authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and Wage Order No. 4-2001.

38. During the applicable statutory period, Defendants failed to provide rest periods. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code section 2699(f)(2).

FOURTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE STATEMENTS
(AGAINST ALL DEFENDANTS)

39. Plaintiff incorporates the preceding paragraphs of this Complaint.

40. Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee. Labor Code § 226(a).

41. Defendants intentionally and willfully violated Section 226 by failing to provide wage statements which included information called for in Section 226(a)(1) (2), (5) and (9).

42. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 226. Labor Code § 2699.5.

43. Labor Code section 226.3 provides for civil penalties for violations of Section 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation.

FIFTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO PROVIDE FINAL WAGES
(AGAINST ALL DEFENDANTS)

44. Plaintiff incorporates the preceding paragraphs of this Complaint.

45. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code section 203.

46. Defendants failed to pay Plaintiff and other aggrieved employees all final wages, including minimum, regular, and overtime wages, and meal and rest period premium wages, as required by Labor Code sections 201-202.

47. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

SIXTH CAUSE OF ACTION
PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS
(AGAINST ALL DEFENDANTS)

48. Plaintiff incorporates the preceding paragraphs of this Complaint.

49. Labor Code section 1174(d) states: "Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but, in any case shall be kept on file for not less than three years."

50. Defendants failed to maintain accurate records showing number of hours worked.

51. Labor Code section 1174.5 states "Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars.

PRAYER FOR RELIEF

Plaintiff Shailaz Mody, on behalf of herself and all other aggrieved employees, prays for judgment as follows:

A. This action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

B. For recovery of civil penalties under Labor Code section 2699 for failure to pay all minimum, regular, and overtime wages owed pursuant to Sections 512, 1194, according to proof;

C. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for failing to pay overtime wages for all hours worked;

D. For recovery of civil penalties under Labor Code section 2699 for failure to provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

E. For recovery of civil penalties under Labor Code section 2699 for failure to pay all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

F. For recovery of civil penalties under Labor Code section 2699 for failure to authorize and permit rest periods, pursuant to Labor Code section 226.7(a), according to proof;

G. For recovery of civil penalties under Labor Code section 2699 for failure to pay all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;

H. For recovery of civil penalties under Labor Code section 2699 for failing to provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according to proof;

I. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to timely pay all final wages (and waiting time penalties) on time each pay period or upon termination of employment pursuant to Labor Code sections 201-203;

J. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

K. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i);

1 L. For reasonable attorneys' fees and costs pursuant to statute, including, Labor
2 Code sections 226, 1194, and 2698, *et seq.*, and Code of Civil Procedure section 1021.5;

3 M. For all interest accrued;

4 N. For such other relief the Court deems just and proper.

5
6 Dated: March 25, 2020

COHELAN KHOURY & SINGER

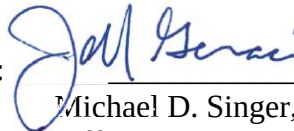
7
8 By: 
9 Michael D. Singer, Esq.
Jeff Geraci, Esq.
Attorneys for Plaintiff SHAILAZ MODY

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

January 13, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail With Return Receipt

CVS Pharmacy, Inc.
One CVS Drive
Woonsocket, Rhode Island 02895

Garfield Beach CVS, L.L.C.
One CVS Drive
Woonsocket, Rhode Island 02895

CVS Pharmacy, Inc.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Garfield Beach CVS, L.L.C.
c/o CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Re: Ms. Shailaz Mody, on behalf of herself and all similarly-situated Garfield Beach CVS, L.L.C. and CVS Pharmacy, Inc. employees in California, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Ms. Shailaz Mody submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Garfield Beach CVS, L.L.C. and CVS Pharmacy, Inc. ("CVS" or "Defendant"). Ms. Mody seeks to represent herself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action against CVS. Labor Code §§ 2698, *et seq.* For purposes of this notice, "aggrieved employees" includes all the Company's non-exempt Supervisors and Assistant Managers ("Managers") in California, and all other positions subject to the same or similar policies described below.

Factual Statement

Ms. Mody was hired as a CVS Shift Supervisor Trainee in August 2017. She worked in San Francisco until leaving in April 2019. She was promoted to Shift Supervisor, and functioned as "key carrier." Responsibilities for Managers and other "key carriers" includes assisting Store Managers, opening and closing the store, turning alarm on and off, opening the safe and change drawers to issue money for cash registers, opening cash registers and depositing change for the start of the shift, and removing cash from drop boxes under each register and depositing it in the safe at appropriate times. They are also responsible accessing, inputting and retrieving employee and store data through the CVS computer systems. They receive, price, and display merchandise.

An important function of Managers is to be available to perform “overrides,” such as voiding a sale, accepting or declining coupons, accepting or declining checks, and processing and issuing certain refunds. If a Manager was not available many transactions could not be completed because Cashiers lack authority to perform them. These transactions must be dealt with immediately to provide good customer service and prevent backing up register lines, delaying checkouts, and inconveniencing and upsetting customers.

At times there is only one Manager or “key carrier” in a store and one cashier. When Ms. Mody, and other managers, are in that situation, they are unable to leave the store or take a meal or rest break. To perform the required duties of a Manager, and to comply with Company policies, Ms. Mody and other similarly situated Managers were required to remain in the store and could not take a break unless, and until, another key carrier arrived at the store.

Ms. Mody worked over ten hours, and at times over twelve hours, in a shift. In an average five-day work week, Ms. Mody would not be provided a meal period about three times per week. The other two days per week, if a meal period was provided, it was given after she had worked five hours and was often interrupted.

Although CVS did not provide her with compliant meal periods, Ms. Mody’s manager, the exempt Store Manager, would enter into the system a meal was taken. This resulted in Ms. Mody not being paid for all time worked.

As a result of the policies described above, CVS violates Industrial Welfare Commission Wage Orders, including 7-2001, and the Labor Code provisions described below.

Labor Code §§ 510 and 1194 (Wages-Off the Clock Work)

Labor Code sections 510 and 1194 require employers to pay at least minimum wages for all hours worked and overtime wages for hours worked over eight per day or forty per week. When Ms. Mody worked during periods she was clocked out for meals, including by the Store Manager, she was not paid for all time worked.

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

CVS must authorize and permit employees “10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours.” *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 29 (2012).

CVS is also required to provide employees a 30-minute, uninterrupted meal period “after no more than five hours of work,” and “a second meal period after no more than 10 hours work.” *Id.* at 1049.

If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee’s regular rate (“premium wages”). Labor Code § 226.7; Industrial Welfare Commission (“IWC”) Wage Order 7-2001

CVS Pharmacy, Inc.
Garfield Beach CVS, L.L.C.
Re: Ms. Shailaz Mody
January 13, 2020
Page 3

Because of CVS policies and practices requiring a key carrier to always be available while a store was open, Ms. Mody and other Managers did not receive compliant rest and meal periods, including second meals in longer shifts. Premium wages were not paid for non-compliant breaks.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, “total hours worked by the employee,” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Cal. Labor Code § 226(a)(2)(9). CVS failed to do this because its policies forced Managers to work while clocked out, or it made meal period entries in time records although Managers were working and had not clocked out for a meal.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Cal. Labor Code § 201. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. As a result of its failure to pay all wages earned, CVS failed to pay all final wages due Ms. Mody and other aggrieved employees, and violated Sections 201-203.

Labor Code § 1174 (Payroll Records)

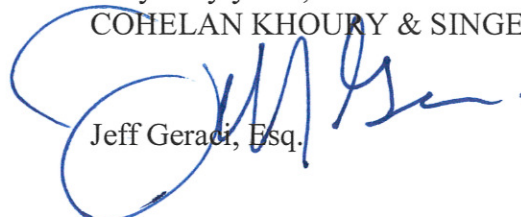
Labor Code section 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee.” An employer may be liable under Section 1174 if it fails to record when employees report to work, the start and end time of their shifts, and the total hours worked or meal periods. See *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp.2d 1040, 1044 (2011). Because its policies forced Managers to work off the clock, or it clocked Managers out although they were working, CVS did not keep required records showing hours worked.

Conclusion

Defendant’s employment practices, as described in detail above, violate IWC Wage Orders 7-2001 and the California Labor Code, including sections 201-203, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 2699.

Our client requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Ms. Mody will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Orders 7-2001, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER



Jeff Geraci, Esq.