

FAXED
COPY

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

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Tel: (619) 595-3001/Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian II (SBN 146621)

sahagii@aol.com

18250 Ventura Blvd.

Tarzana, CA 91356

Tel: (818) 609-0807/Facsimile: (818) 609-0892

Attorneys for Plaintiff Maria Reyes, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MARIA REYES, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

PLASTIKON INDUSTRIES, a California
corporation; and DOES 1 through 10,
Inclusive

Defendants.

Case No. RG20054268

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay All Wages
2. Meal Period Violations
3. Wage Statement Violations
4. Waiting Time Penalties
5. Unfair Business Practices
6. PAGA Penalties for Failure to Pay All Wages
7. PAGA Penalties for Meal Period Violations
8. PAGA Penalties for Wage Statement Violations
9. PAGA Penalties for Waiting Time Penalties

DEMAND FOR JURY TRIAL

ENDORSED
FILED
ALAMEDA COUNTY

MAY 14 2020

CLERK OF THE SUPERIOR COURT

By **TANIA PIERCE**

1 Plaintiff MARIA REYES, on behalf of herself, and all others similarly situated, alleges:

2 **INTRODUCTION**

3 1. This action arises from PLASTIKON INDUSTRIES, a California Corporation
4 (“PLASTIKON”), and Does 1-10 (“Defendants”)’ failure to provide all regular, minimum, and
5 overtime wages, meal periods or premium wages for meal periods not provided, accurate wage
6 statements, and timely final wages, all of which are unfair business practices, for four years
7 before this action was filed (“Class Period”).

8 2. Plaintiff notified the California Labor and Workforce Development Agency
9 (“LWDA”) of these claims. The LWDA did not intervene, and Defendants did not attempt to
10 cure within the time required. Plaintiff seeks civil penalties as a representative of the State of
11 California, as provided by the Private Attorneys General Act (“PAGA”), on behalf of the
12 aggrieved employees who held the positions identified and suffered one or more of the
13 violations alleged for the period one year and 65 days from the date of filing for PAGA
14 penalties (“PAGA Period”). A true and correct copy of the February 11, 2020 Notice showing
15 compliance with Labor Code section 2699.3 is attached as **Exhibit 1**.

16 **JURISDICTION AND VENUE**

17 3. Venue as to each Defendant is proper in this judicial district. Code of Civil
18 Procedure, section 395. Defendants conduct business in Alameda County, and are within the
19 Court’s jurisdiction for service of process. The unlawful acts alleged have a direct effect on
20 Plaintiff and those similarly situated within Alameda County. Individual class member claims
21 are under the \$75,000 jurisdictional threshold for federal jurisdiction.

22 4. There is no federal question, the issues are based solely on California law,
23 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
24 Professions Code.

25 5. There is no federal question, the issues are based solely on California law,
26 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
27 Professions Code. PAGA actions are not subject to removal.

28 ///

THE PARTIES

6. Maria Reyes is a California resident and was a Quality Control Inspector with Defendants in Hayward, California, from December 2015 through March 12, 2019.

7. Plastikon Industries is a California Corporation, which conducted business in, and employed Plaintiff and Plaintiff Class Members during the Class Period, in the County of Alameda.

8. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and alleges, each DOE Defendant is legally responsible in some manner for unlawful acts alleged. Plaintiff will amend to add names and capacities of DOE Defendants when they become known.

9. 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. Based on employment records and policies and control over Plaintiff, Defendants employed Plaintiff.

GENERAL ALLEGATIONS

10. Plaintiff re-alleges all preceding paragraphs.

11. During the Class Period, Defendants manufactured plastic components for the medical, automotive, and electronics industries.

12. During the Class Period, Defendants conducted business and employed Plaintiff and Plaintiff Class members in Alameda County and California.

13. During the Class Period, Plaintiff and members of the Plaintiff Class worked shifts over eight hours per day and were paid as hourly, non-exempt employees.

14. Plaintiff and Plaintiff Class Members were required to, and did, clock in and out for each work period, but Defendants rounded these time entries to the quarter hour, reducing the number of hours Plaintiff and Plaintiff Class Members were paid minimum, regular, and overtime wages.

15. During the Class Period, Defendants failed to pay for time actually worked by

1 Plaintiff and members of the Plaintiff Class, including overtime.

2 16. During the Class Period, Defendants failed to have a meal period policy
3 compliant with the provisions of the California Labor Code and IWC Wage Orders, and
4 Plaintiff and Plaintiff Class Members were not provided uninterrupted, 30-minute meal periods,
5 starting no later than the end of the fifth hour of work.

6 17. During the Class Period, Plaintiff and members of the Plaintiff Class were not
7 paid all premium wages for non-compliant meal periods.

8 18. During the Class Period, Defendants had a consistent policy and practice of
9 failing to timely compensate Plaintiff and members of the Plaintiff Class for all wages owed
10 during and upon separation of employment, in violation of California state wage and hour laws.

11 19. As a result of Defendants' violations during the Class Period, not all wage
12 statements provided to Plaintiff and members of the Plaintiff Class accurately stated the total
13 hours worked.

14 20. As a result of Defendants' rounding policy, they failed to keep all required
15 records for Plaintiff and Plaintiff Class members in violation of Labor Code sections 1174 and
16 1174.5.

17 **CLASS ACTION ALLEGATIONS**

18 21. Plaintiff re-alleges all preceding paragraphs.

19 22. Plaintiff seeks to represent a Plaintiff Class defined as:

20 All persons employed by Defendants as non-exempt employees, at any
21 time starting four years from the filing of this Complaint, who were
22 subject to a policy of rounding time entries and not being paid for actual
time worked.

23 23. Plaintiff seeks to certify a Subclass defined as:

24 **Regular Wage Subclass**

25 All Plaintiff Class Members not paid all regular wages for all hours
worked.

26 24. Plaintiff seeks to certify a Subclass defined as:

27 **Minimum Wage Subclass**

28 All Plaintiff Class Members not paid all minimum wages for all hours
worked.

25. Plaintiff seeks to certify a Subclass defined as:

Overtime Subclass

All Plaintiff Class Members not paid all overtime wages for all hours worked over eight per day or forty per week.

26. Plaintiff seeks to certify a Subclass defined as:

Meal Period Subclass

All Plaintiff Class members who worked shifts of five hours or more without an uninterrupted, duty-free meal period of at least 30 minutes, starting no later than the end of the fifth hour of work, and not paid one hour at the regular rate for each shift.

27. Plaintiff seeks to certify a subclass defined as:

Wage Statement Subclass

All Plaintiff Class Members to whom Defendants improperly failed to provide accurate itemized wage statements under Labor Code § 226.

28. Plaintiff seeks to certify a Subclass defined as:

Waiting Time Subclass

All Plaintiff Class Members to whom Defendants failed to pay all wages due to them upon termination or resignation under Labor Code §§ 201-203.

29. Plaintiff seeks to certify a subclass of employees defined as follows:

UCL Subclass

All members of the Minimum Wage, Regular Wage, Overtime Wage, and Meal Period Subclasses.

30. Plaintiff reserves the right to modify the Class description or further divide it into subclasses or limit it to particular issues. California Rules of Court, Rule 3.765(b).

31. This action may be maintained as a class action because many persons have well-defined common interest and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

32. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

33. **Numerosity**: While the precise number of Plaintiff Class Members has not yet been determined, Plaintiff is informed and believes there are over 100 putative Plaintiff Class Members in California affected by Defendants' policies. Joinder of all members of the

1 proposed Plaintiff Class is not practicable

2 34. **Typicality**: Plaintiff's claims are typical of the claims of the proposed Plaintiff
3 Class. Plaintiff and Plaintiff Class and Subclass Members sustained injuries and damages
4 caused by Defendants' common course of conduct in violation of laws, regulations, and statutes
5 as alleged.

6 35. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and
7 protect the interests of the members of the Plaintiff Class. Proposed Class Counsel, Cohelan
8 Khoury & Singer and Law Offices of Sahag Majarian II, who represent Plaintiff, are competent
9 and experienced in litigating employment class actions. Plaintiff is aware and understands her
10 obligations to faithfully assist in the preparation of the case and to make decisions in the best
11 interests of the putative class.

12 36. **Superiority of Class Action**: A class action is superior to other available means
13 for the fair and efficient adjudication of this controversy. Each Plaintiff Class Member has been
14 damaged, and is entitled to recovery, by Defendants' illegal policies and practices, and a Class
15 action allows them to litigate their claims in the most efficient and economical manner for the
16 parties and judicial system. There are no likely difficulties managing this action that preclude
17 its maintenance as a class action.

18 37. Predominating common questions of law and fact include:

19 a. Whether Defendants compensated Plaintiff Class Members for all
20 minimum, regular, or overtime wages for all hours worked including rounded hours;

21 b. Whether Defendants violated California law by failing to provide
22 Plaintiff Class Members with meal periods before the end of the fifth hour of work;

23 c. Whether the Plaintiff Class is entitled to penalties under Section 226;

24 d. Whether the Plaintiff Class is entitled to waiting time penalties under
25 Section 203;

26 e. Whether Defendants violated Labor Code sections 203, 226, 1194, or
27 Wage Order 1-2001, and whether a violation of fundamental public policy is established;

28 h. Whether the Plaintiff Class and Subclasses are entitled to equitable relief

pursuant to Business and Professions Code, sections 17200, *et seq.*

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**Failure to Pay All Wages
(By Plaintiff and the Minimum, Regular, and Overtime Wage Subclasses Against Each Defendant)**

38. Plaintiff re-alleges all preceding paragraphs.

39. By failing to pay all wages for hours Plaintiff and members of the Plaintiff Class were under their control, including by rounding time downward to their detriment, Defendants failed to pay minimum, regular, and overtime wages and violated Labor Code sections 218.5, 510, and 1194, and IWC Wage Orders, including 1-2001.

40. Defendants' unlawful acts deprived Plaintiff and Plaintiff Class Members of minimum, regular, and overtime wages in amounts to be determined at trial, and they are entitled to recover these amounts, with liquidated damages for unpaid minimum wages, and interest, attorneys' fees, and costs.

SECOND CAUSE OF ACTION

**Failure to Provide Meal Periods
(By Plaintiff and the Meal Period Subclass Against Each Defendant)**

41. Plaintiff re-alleges all preceding paragraphs.

42. By failing to provide duty-free meal periods of at least thirty (30) minutes for shifts of five hours or more, starting before the end of the fifth hour of work, and failing to pay Plaintiff and Meal Period Subclass Members one hour of pay at their regular rate for each day a meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and 512, and IWC Wage Orders, including No. 1-2001.

43. Defendants' unlawful acts deprived Plaintiff and the members of the Plaintiff Class and Subclasses Plaintiff seeks to represent of premium wages and/or other compensation in amounts to be determined at trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

///

///

THIRD CAUSE OF ACTION

**Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and the Wage Statement Subclass Against Each Defendant)**

44. Plaintiff re-alleges all preceding paragraphs.

45. Defendants must itemize in wage statements all deductions from payment of wages and to accurately report, among other things, total hours worked, all hourly wage rates earned, and gross and net wages earned. Labor Code § 226(a). Defendants knowingly and intentionally failed to comply with Labor Code section 226(a) on wage statements provided to Plaintiff and members of the Wage Statement Subclass because, among other reasons, the wage statements failed to accurately set forth all hours worked, and all hourly rates earned, and gross and net wages earned.

46. The wage statements issued to Plaintiff and members of the Plaintiff Class were inaccurate and incorrect causing confusion and damage to Plaintiff and members of the Plaintiff Class and concealed from them their earnings to which they were entitled to receive by law. As a consequence of Defendants' knowing and intentional failure to comply with section 226(a), Plaintiff and Wage Statement Subclass Members are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), with interest and attorneys' fees and costs.

FOURTH CAUSE OF ACTION

**Failure to Pay Wages Due at Termination
(By Plaintiff and the Waiting Time Subclass Against Each Defendant)**

47. Plaintiff re-alleges all preceding paragraphs.

48. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to timely pay former employees all earned wages. Labor Code sections 201 and 202 require Defendants to pay their employees all wages due within the time required by law. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

49. Members of the Waiting Time Subclass are no longer employed by Defendants.

50. Defendants willfully failed to pay Waiting Time Subclass Members wages due

1 at termination or within 72 hours of resignation, and failed to pay those sums for 30 days after
2 that.

3 51. Defendants' willful failure to pay wages to the Waiting Time Subclass Members
4 violated Labor Code section 203 because Defendants knew wages were due to the Waiting
5 Time Subclass Members, but failed to pay them.

6 **FIFTH CAUSE OF ACTION**
7 **Violations of the Unfair Competition Law**
8 **(By Plaintiff and the UCL Subclass Against Each Defendant)**

9 52. Plaintiff re-alleges all preceding paragraphs.

10 53. At all relevant times, Defendants engaged in unlawful and unfair business
11 practices in violation of Business and Professions Code sections 17200, *et seq.* through
12 common and systemic employment policies and practices by failing to provide the employment
13 protections, wages, premiums, and other funds and property owed to Plaintiff and the UCL
14 Subclass, as alleged throughout this Complaint, in violation of the Labor Code and IWC Wage
15 Orders.

16 54. Defendants' business practices deprived Plaintiff and the UCL Subclass of
17 compensation and other funds to which they are legally entitled, constitutes unlawful and unfair
18 business practices, provides an unfair advantage to Defendants over their competitors who
19 comply with wage and hour and employment laws, and unjustly enriches them.

20 55. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as
21 alleged in throughout this Complaint, Plaintiff, as an individual and on behalf of the Plaintiff
22 Class Members, seeks restitution of all monies and property withheld, acquired or converted by
23 Defendants pursuant to Business and Professions Code sections 17202, 17203, 17204, and
24 17208.

25 56. Plaintiff and members of the Plaintiff Class are entitled to an injunction,
26 restitution, and other equitable relief against such unlawful practices to return all funds over
27 which Plaintiff and members of the Plaintiff Class have an ownership interest and to prevent
28 future damage pursuant to Business and Professions Code sections 17200, *et seq.*

///

SIXTH CAUSE OF ACTION
PAGA Penalties for Failure to Pay Wages
(By Plaintiff and Aggrieved Employees Against Each Defendant)

57. Plaintiff re-alleges all preceding paragraphs.

58. “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).

59. “[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).

60. “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).

61. 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.

62. 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.

63. Defendants’ conduct violates Wage Orders Nos. 4-2001 and 5-2001, 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.

SEVENTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Meal Periods
(By Plaintiff and Aggrieved Employees Against Each Defendant)

64. Plaintiff re-alleges all preceding paragraphs.

65. 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 Orders 4-2001 and 5-2001.

66. 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 Orders No. 4-2001 and 5-2001.

67. 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 § 2699(f)(2).

EIGHTH CAUSE OF ACTION
PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and Aggrieved Employees Against Each Defendant)

68. Plaintiff re-alleges all preceding paragraphs.

69. 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).

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

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

72. 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.

NINTH CAUSE OF ACTION

**PAGA Penalties for Failure to Pay Wages Due at Termination
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

73. Plaintiff re-alleges all preceding paragraphs.

74. 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 § 203.

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

76. 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.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

A. For certification of this action as a class action;

B. For appointment of Plaintiff as the representative of the Plaintiff Class;

C. For appointment of counsel for Plaintiff as Class Counsel;

D. For injunctive relief;

E. For compensatory damages in an amount according to proof;

F. For all interest accrued to date;

G. For disgorgement of all amounts wrongfully obtained;

H. 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;

I. For recovery of civil penalties under Labor Code section 2699 for failure to pay

1 all minimum and overtime wages owed pursuant to Section 1194, according to proof;

2 J. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for
3 failing to pay minimum and overtime wages for all hours worked, according to proof;

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

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

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

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

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

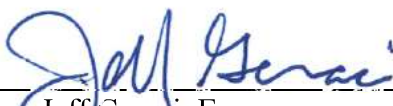
16 P. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to
17 the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i).

18 Q. For reasonable attorneys' fees and costs; and

19 R. For such other relief the Court deems just and proper.

20 Dated: May 13, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

21
22 By:  _____

Jeff Geraci, Esq.

23 Attorneys for Plaintiff MARIA REYES, on behalf of
24 herself and all others similarly situated

25 ///

26 ///

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

Dated: May 13, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

By: _____



Jeff Geraci, Esq.

Attorneys for Plaintiff MARIA REYES, on behalf of
herself and all others similarly situated

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

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305
Telephone: (619) 595-3001
Facsimile: (619) 595-3000
www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

February 11, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail With Return Receipt

Plastikon Industries
688 Sandoval Way
Hayward, California 94544

Plastikon Industries
c/o Ms. Lani Vasquez
688 Sandoval Way
Hayward, California 94544

Re: Ms. Maria Reyes, on behalf of herself and similarly-situated Plastikon Industries employees,
as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Ms. Maria Reyes submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Plastikon Industries ("Plastikon" or "Defendant"). Ms. Reyes seeks to represent herself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action. Labor Code §§ 2698, *et seq.* For purposes of this notice, "aggrieved employees" includes Plastikon's non-exempt hourly employees.

Factual Statement

Plastikon Industries is a manufacturer of plastic components for the medical, automotive, and electronics industries in Hayward, California. Ms. Reyes was hired as a temporary non-exempt Quality Control Inspector, became a permanent employee in December 2015 and was terminated March 12, 2019. During her employment, including one year before filing this Notice, Ms. Reyes and other aggrieved employees were subject to policies which violate the California Labor Code.

Ms. Reyes and other aggrieved employees were subject to Plastikon's policy of rounding time entries to the nearest 15 minutes. Plastikon's policies encouraged punctuality and penalized tardiness. It does not appear Plastikon advised aggrieved employees of the rounding policy or issued a written policy describing it. Plastikon did not issue any policies advising employees not to work before or after scheduled shift times. As a result of these policies, Ms. Reyes and other aggrieved employees were not paid all earned minimum, regular, overtime, and double time wages.

For example, Ms. Reyes' usual shift began at 7:00 a.m. She usually arrived at 6:55 a.m. or earlier, clocked-in, and began work, but Plastikon would begin paying her at 7:00 a.m. Because of the number of employees trying to clock-in, Ms. Reyes was forced to wait in line to clock-in, but was not paid for this time. As a result, Ms. Reyes, and all aggrieved employees subject to this rounding policy, were underpaid.

Because Ms. Reyes and the aggrieved employees are not paid all earned wages, and their hours worked are not accurately kept, the wage statements issued during their employment are inaccurate, and they are not paid all final wages owed to them when their employment terminates.

As a result of the policies described above, Plastikon violates Industrial Welfare Commission Wage Orders, including 1-2001, and the Labor Code provisions described below.

Labor Code §§ 218.5, 510 and 1194 (Minimum, Regular, and Overtime Wages)

Labor Code sections 218.5, 510 and 1194 require employers to pay wages agreed to, and at least minimum wages for all hours worked, overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve per day. By rounding, and not paying for all actual time worked by Ms. Reyes and aggrieved employees, Plastikon did not pay for all time worked, including overtime.

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.” Labor Code § 226(a)(2)(9). Plastikon’s wage statements do not show total hours worked, accurately record time, and do not pay for all time worked.

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

Plastikon must 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.” *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1049 (2012).

If 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 Wage Commission (“IWC”) Wage Order 1-2001.

It appears Plastikon did not issue, or did not distribute meal period policies. There was no bell or other indication when a meal period was to begin. Ms. Reyes frequently began her meal period after her fifth hour of work, at 12:20 p.m. or later. Even if she began a meal period at 12:00 p.m., this was late because she began her shift when she clocked-in, before 7:00 a.m. As the result of the lack of policies, rounding of time, and the nature of the work, Ms. Reyes and other aggrieved employees frequently did not receive a compliant meal break because they began more than five hours after their shifts began.

Because of Plastikon’s policies and practices, or the lack of complaint policies, Ms. Reyes and other aggrieved employees did not receive compliant meal periods, including second meals and third rest periods. Premium wages were not paid for non-compliant breaks.

Plastikon Industries
Re: Ms. Maria Reyes
February 11, 2020
Page 3

Labor Code §§ 201-203 (Final Wages)

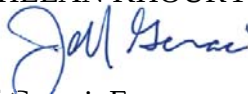
An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code § 201. If an employer willfully fails to timely pay all final wages, the wages continue at the same rate for up to 30 days, until paid.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

Conclusion

Defendant's employment practices, as described in detail above, violate IWC Wage Orders 4-2001, 5-2001 and the California Labor Code, including sections 201-204, 218.5, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197.1, 1198, 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. Reyes will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Order 1-2001, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Ceraci, Esq.

cc:
Sahag Majarian, Esq. (*Via email only*)
sahagii@aol.com

Mollie M. Burks, Esq. (*Via U.S. Mail*)
Gordon Reese Scully Mansukhani LLP
1111 Broadway, Suite 1700
Oakland, CA 94607