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ELECTRONICALLY FILED
Superior Court of California,
County of Placer
07-13-2020
By: Mavis Anderson, Deputy Clerk

Attorneys for Plaintiff Damian Mouton
on behalf of himself and similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF PLACER**

DAMIAN MOUTON, individually and as)
an aggrieved employee pursuant to the)
Private Attorneys General Act (PAGA),)
Plaintiffs,)
vs.)
NATIONAL VISION, INC.; Does 1)
through 20, inclusive,)
Defendants.)

Case No. S-CV-0045191

COMPLAINT FOR DAMAGES:

1. Retaliation in Violation of Labor Code § 1102.5;
2. Failure to Provide Payroll Records;
3. Failure to Pay Minimum Wage for All Hours Worked;
4. Waiting Time Penalties;
5. Failure to Pay Overtime Wages;
6. Failure to Provide Payroll Records;
7. Failure to Reimburse Business Expenses;
8. Violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq. ;
9. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.

JURY TRIAL DEMANDED

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3 Plaintiff DAMIAN MOUTON (“Plaintiff”), on behalf of himself and all other similarly
4 situated employees hereby files this Complaint against Defendant NATIONAL VISION, INC., a
5 Georgia Corporation; Does 1 through 20 (collectively referred to as “Defendants”). Plaintiff alleges
6 the following:

7 **INTRODUCTION**

8 1. This complaint is brought by Plaintiff seeking individual damages and PAGA
9 penalties for failure to provide accurate wage statements, failure to provide compliant Wage Theft
10 Notices, missed meal and rest periods, unpaid off the clock work, unpaid minimum and overtime
11 wages, and derivative civil and statutory penalties. Plaintiff seeks these damages and penalties, plus
12 interest and attorney’s fees, on behalf of himself and similarly situated employees.

13 2. Plaintiff also seeks damages for his illegal and retaliatory termination following
14 complaints that he made to his employer regarding being asked to fraudulently enter punches on his
15 manager’s timecard.

16 3. During all relevant times, Plaintiff and similarly situated employees worked for
17 Defendants as employees.

18 **JURISDICTION AND VENUE**

19 4. The Placer County Superior Court has jurisdiction in this matter due to alleged
20 violations of California Labor Code §§ 201, 203, 226, 226.3, 213, 2698 *et seq.*, Business and
21 Professions Code § 17200 *et seq.*

22 5. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
23 of the wrongful acts and violations of law asserted herein occurred within Placer County.

24 **PARTIES**

25 6. Plaintiff DAMIAN MOUTON is over the age of eighteen (18) and is a resident of the
26 State of California and a former employee of Defendants.

27 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant NATIONAL
28 VISION, INC. is now and/or at all times mentioned in this Complaint a Georgia Corporation and the

owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly and severally, have acted with deliberate indifference and conscious disregard to the rights of all employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants were at all relevant times advised by skilled California employment law attorneys and knew the requirements of the California Labor Code with respect to employee wage statements, payment of wages, calculation of overtime wages, and provision of meal and rest periods.

9. Defendants proximately caused Plaintiff and similarly situated employees to be subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this Complaint.

10. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or joint venturer of the remaining defendants and was acting within the course and scope of that relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants. The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive, when they have been determined.

11. On April 27, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The LWDA has not yet responded to the PAGA Notice.

GENERAL ALLEGATIONS

12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as though fully set forth herein.

1 13. Plaintiff worked for Defendants from approximately August 2019 through
2 approximately December 2019 as an optical lab technician. Plaintiff was paid an hourly rate,
3 plus a non-discretionary production bonus based on the number of eyeglass pairs he produced.
4 During his employment, Plaintiff, and other aggrieved employees, were made to suffer numerous
5 violations of the California Labor Code.

6 14. Defendants did not allow Plaintiff and similarly situated employees to take their
7 statutorily required meal and rest periods. Specifically, Plaintiff and similarly situated employees
8 were frequently prevented from taking meal and rest periods due to the demands of the work and
9 the need to complete production of eyeglasses quickly.

10 15. As a result, meal and rest periods were not provided in compliance with California
11 law. Defendants failed to provide Plaintiff and other similarly situated employees a 30-minute,
12 duty-free meal period before the end of the fifth hour of work as required under the law.
13 Defendants also failed to provide rest periods to Plaintiff and similarly situated employees for
14 every 4 hours worked or major fraction thereof. Plaintiff's manager was aware that he could not
15 take his meal and rest periods as required under the statute.

16 16. In addition to working in the lab, Plaintiff was also required to travel offsite to
17 visit customers at residential living facilities. Plaintiff was required to clock out before leaving
18 on these required trips and was not paid mileage to reimburse him for use of his personal vehicle.
19 Plaintiff's supervisors also required him to use his personal cell phone for business purposes, but
20 the Defendants did not reimburse any of those expenses to Plaintiff and similarly situated
21 employees.

22 17. In addition to his off-the-clock work at offsite locations, Plaintiff was pressured to
23 work off the clock to complete his work duties without incurring overtime. As a result,
24 Defendants failed to reimburse Plaintiff and similarly situated employees for necessary business
25 expenses, failed to pay at least minimum wage for all hours worked and applicable overtime pay,
26 to Plaintiff and similarly situated employees. Plaintiff and similarly situated employees received
27 various forms of nondiscretionary incentive pay, and these payments were not factored into
28 Plaintiff's and similarly situated employees' regular rate of pay for overtime purposes.

18. As a result, Defendants did not provide Plaintiff and similarly situated employees legally compliant wage statements noting, among other things, total hours worked, gross wages earned, the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Defendants also did not provide Plaintiff and similarly situated aggrieved employees all wages owed upon their termination or within seventy-two (72) hours of their separation from employment.

19. During his employment, Plaintiff was asked by his manager to fraudulently enter punches on the manager's timecard showing he left work later than the manager actually did. Plaintiff had concerns that doing this was improper and complained to Defendant's Human Resources department. Two days later, Plaintiff was terminated by the same manager for violating the chain of command in making his complaint to HR. As a result, Plaintiff was retaliated against for reporting the illegal and fraudulent behavior his manager had asked him to engage in.

20. On January 27, 2020, Plaintiff, through his counsel, sent a request to Defendant for personnel and payroll records pursuant to Labor Code sections 1198.5, 432, 226, and 247.5, via certified mail. Defendants failed to respond or make the pay records pursuant to Labor Code section 226 available within the statutorily required timeframe.

21. Defendants' uniform policies and practices not to provide Plaintiff and similarly situated employees with compliant wage statements, not to provide meal and rest periods, and not to reimburse employees for business expenses incurred are evidenced by Defendants' business records.

FIRST CAUSE OF ACTION
(Retaliation in Violation of Labor Code section 1102.5)

22. Plaintiff hereby incorporates by reference Paragraphs 1 through 21 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

23. California Labor Code § 1102.5 prohibits retaliation against an employee for disclosing information to a person with authority over the employee, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or

1 a violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5
2 further prohibits retaliation against an employee for refusing to participate in an activity that
3 would result in a violation of state or federal statute or a violation or noncompliance with a state
4 or federal rule or regulation.

5 24. Plaintiff informed Defendants as to his concerns regarding his manager asking
6 him to illegally and fraudulently make entries on his manager's timecard showing the manager
7 was working when in fact he had left the workplace.

8 25. Plaintiff believed these actions constituted theft and fraud.

9 26. Following Plaintiff's notification to Defendants of the above-referenced concerns,
10 Plaintiff's manager informed him that he was being terminated for going outside of the chain of
11 command when making his complaint.

12 27. As a direct, foreseeable, and proximate result of Defendant's retaliatory actions,
13 Plaintiff has suffered and continues to suffer substantial losses in earnings and job benefits, all to
14 his damage herein in an amount not less than the minimal jurisdiction amount of this court, the
15 amount of which will be established at trial.

16 28. As a direct, foreseeable, and proximate result of Defendant's unlawful actions,
17 Plaintiff has suffered emotional distress, humiliation, shame, and embarrassment, all to the
18 Plaintiff's damage in an amount to be established at trial.

19 **SECOND CAUSE OF ACTION**
20 **(Failure to Provide Payroll Records Upon Request)**

21 29. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 28 as
22 though fully set forth herein.

23 30. California Labor Code section 226(f) provides that if an employer failed to allow
24 an employee to inspect or copy records within twenty-one (21) days of the request for such
25 records, the employee is entitled to recover a \$750.00 penalty from the employer.

26 31. On January 27, 2020, Plaintiff requested his records, pursuant to California Labor
27 Code section 226(a), from Defendants. Defendants did not provide the records or make them
28 available within the statutorily required timeframe.

32. Plaintiff seeks an injunction ordering Defendants to produce such records.

33. As a proximate cause of Defendants' failure to provide the requested records in a timely manner, Plaintiff was damaged and is entitled to recover a \$750.00 penalty pursuant to California Labor Code section 226(f), and an award of costs and reasonable attorney's fees pursuant to California Labor Code section 226(h).

THIRD CAUSE OF ACTION
(Failure to Pay Minimum Wage for All Hours Worked)

34. Plaintiff hereby incorporates by reference Paragraphs 1 through 33 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

35. Defendants were required to compensate Plaintiff with at least the State's minimum wage for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

36. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

37. Defendants' conduct described herein violates California Labor Code section 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

FOURTH CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)

38. Plaintiff incorporates by reference and re-allege paragraphs 1 through 37 as though fully set forth herein.

39. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the

1 *employee is paid, (7) the name of the employee and the last four digits of his*
2 *or her social security number or an employee identification number other*
3 *than a social security number, (8) the name and address of the legal entity*
4 *that is the employer and, if the employer is a farm labor contractor, as*
5 *defined in subdivision (b) of Section 1682, the name and address of the legal*
6 *entity that secured the services of the employer, and (9) all applicable hourly*
7 *rates in effect during the pay period and the corresponding number of hours*
8 *worked at each hourly rate by the employee. The deductions made from*
9 *payment of wages shall be recorded in ink or other indelible form, properly*
10 *dated, showing the month, day, and year, and a copy of the statement and*
11 *the record of the deductions shall be kept on file by the employer for at least*
12 *three years at the place of employment or at a central location within the*
13 *State of California.*

14 40. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
15 itemized statement or failed to provide an accurate and complete itemized statement showing the
16 requirements set forth in Labor Code section 226(a). Defendants also failed to list on the wage
17 statements provided to Plaintiff all hours worked and the correct regular rate for overtime
18 purposes.

19 41. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' failure
20 to provide accurate and complete information as required by any one or more of items (1) to (9),
21 inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily
22 determine (i.e. a reasonable person in each Plaintiff's position would not be able to readily
23 ascertain the information without reference to other documents or information) from the wage
24 statement alone.

25 42. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendants
26 to comply with Labor Code §§ 226(a) and 1174(d), and all applicable damages and civil
27 penalties.

28 **FIFTH CAUSE OF ACTION**
(Waiting Time Penalties)

43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as
though fully set forth herein.

44. An employer must pay an employee who is terminated all unpaid wages
immediately upon termination. Labor Code § 201.

1 45. An employer must pay an employee who resigns all unpaid wages within seventy-
2 two (72) hours of resignation. Labor Code § 202.

3 46. An employer who willfully fails to pay an employee wages in accordance with
4 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty
5 (30) days. Labor Code § 203.

6 47. Plaintiff did not receive all wages, including minimum and overtime wages and
7 meal and rest period premiums, at his termination or separation from employment. Specifically,
8 Defendants failed to pay Plaintiff all wages owed at the time of termination.

9 48. Defendants knew of their obligation to pay Plaintiff for all hours worked because
10 they had knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8)
11 hours a day and/or forty (40) hours a week. Such conduct shows Defendants' knowledge of
12 their obligation to pay all wages owed upon termination and willful refusal.

13 49. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
14 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
15 Defendants' failure to pay all wages due in an amount to be established at trial.

16 **SIXTH CAUSE OF ACTION**
17 **(Failure to Pay Overtime Wages)**

18 50. Plaintiff incorporates by reference and re-allege paragraphs 1 through 49 as
19 though fully set forth herein.

20 51. During the period Plaintiff was employed by Defendants, Defendants were
21 required to compensate him one and one-half (1½) times the regular rate of pay for hours worked
22 in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the
23 regular rate of pay for hours worked in excess of twelve (12) hours per day. See California
24 Labor Code §§ 510, 1194. Although Plaintiff regularly worked in excess of eight (8) hours a day
25 and/or forty (40) hours per week, Defendants failed to pay all overtime wages owed to him.

26 52. Plaintiff was a non-exempt employee under the administrative, executive, or
27 professional exemptions of the applicable Wage Order and California Labor Code section 510.
28

1 53. On information and belief, Defendants did not calculate the regular rate of pay
2 correctly for purposes of paying overtime, thus Plaintiff and other employees in California were
3 underpaid overtime wages.

4 54. Plaintiff and similarly situated employees received various forms of
5 nondiscretionary incentive pay, and these payments were not factored into Plaintiff's and
6 similarly situated employees' regular rate of pay for overtime purposes

7 55. Defendants' conduct described herein violates California Labor Code sections 510
8 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been
9 damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now
10 seek these wages, attorney's fees and costs, and interest pursuant to California Labor Code
11 sections 1194.

12 **SEVENTH CAUSE OF ACTION**
13 **(Failure to Reimburse Business Expenses)**

14 56. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as
15 though fully set forth herein.

16 57. Labor Code section 2802(a) states that "An employer shall indemnify his or her
17 employee for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
19 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
20 believed them to be unlawful."

21 58. Defendants knew that Plaintiff traveled offsite for business purposes and was not
22 reimbursed for the use of his personal vehicle. Plaintiff also used his personal cell phone for
23 work purposes, including for calls and texts required for work purposes. However, Defendants
24 did not reimburse Plaintiff for these expenses.

25 59. Defendants' conduct described herein violated California Labor Code section
26 2802. As a proximate result of Defendants' conduct, Plaintiff has been damaged in an amount to
27 be established at trial, and is entitled to recover these damages, as well as interest and reasonable
28 attorney's fees and costs, pursuant to statute.

EIGHTH CAUSE OF ACTION
(Unfair Competition)

60. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 59 as though fully set forth herein.

61. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. See Cal. Bus. and Prof. Code §§ 17200 *et seq.*

62. Defendants committed numerous violations of the California Labor Code throughout the employment relationship.

63. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

64. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution as a result of its unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

NINTH CAUSE OF ACTION
(Civil Penalties Pursuant to PAGA § 2698 *et seq.*)

65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code violations identified above.

67. On or about April 27, 2020, Plaintiff sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this First Amended Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

68. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all Aggrieved Employees for all violations of the Labor Code from April 27, 2019, through trial on this matter.

69. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether he experienced them personally or not.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
3. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
5. For injunctive relief;
6. For an award of prejudgment and post-judgment interest; and
7. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

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Dated: July 6, 2020

Castle Law: California Employment Counsel

By: 
Kent L. Bradbury
Timothy B. Del Castillo
Attorneys for Plaintiff DAMIAN MOUTON

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: July 6, 2020

Castle Law: California Employment Counsel

By: 
Kent L. Bradbury
Timothy B. Del Castillo
Attorneys for Plaintiff DAMIAN MOUTON