

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Dennis Landin

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Attorneys for Plaintiff:
ESTEBAN ACUÑA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ESTEBAN ACUÑA,

Plaintiff,

v.

SPRINT/UNITED MANAGEMENT
COMPANY and Does 1 through 50,
Inclusive,

Defendants.

Case Number: **20STCV33926**

Assigned for all purposes to:

**COMPLAINT FOR: VIOLATION OF
THE PRIVATE ATTORNEY GENERAL
ACT (LABOR CODE SECTIONS 2698, ET
SEQ.)**

DEMAND FOR JURY TRIAL

Plaintiff, ESTEBAN ACUÑA alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff now, and at all relevant times did, reside in the County of Los Angeles, State of California.

2. At all times alleged herein, Plaintiff was employed by Defendants, SPRINT/UNITED MANAGEMENT COMPANY (hereinafter referred to as SPRINT) and Does 1 through 50, and each of them, in the City of Montebello, County of Los Angeles, State of

California, and the Defendants' conduct hereinafter alleged occurred in said County and State.

3. Plaintiff is informed and believes, and on that basis alleges, that Defendants SPRINT, and Does 1 through 50, inclusive, and each of them, were corporations and/or other business entities form unknown conducting business in the State of California, County of Los Angeles.

4. The true names and capacities of Defendants named as Does 1 through Doe 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this complaint, setting forth the true names and capacities of these fictitious Defendants when they are ascertained. Plaintiff is informed and believes, and on that basis, alleges that each of the fictitious Defendants has participated in the acts alleged in this complaint to have been done by the named Defendants.

5. Plaintiff is informed and believes and on that basis alleges that, at all relevant times, each of the Defendants, whether named or fictitious, was the agent or employee of each of the other Defendants, and in doing the things alleged to have been done in the complaint, acted within the scope of such agency or employment, or ratified the acts of the other.

DEFENDANTS' LABOR CODE VIOLATIONS

6. During the time that Plaintiff worked for Defendants, and each of them, said Defendants failed to provide final wages to Plaintiff and all similarly aggrieved employees of Defendants who, like Plaintiff, were terminated, and not provided with final wages due to them on the day of their termination. Such conduct violates California law, including, but not necessarily limited to, Labor Code Sections 201, 202, and 203.

7. California Labor Code §§ 201-202 and 208 govern payment upon termination of employment. Where the employer willfully violates the provisions of §§ 201-202 regarding timing of payment, section 203 provides "waiting time penalties" of up to 30 days' wages.

8. Place of payment at termination is "at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor." (Lab.C. section 208.)

9. An employer who discharges an employee must immediately pay all compensation due and owing. (Lab.C. § 201(a).) "Discharge" includes not only involuntary termination from an ongoing employment relationship but also release of an employee upon completion of a specified job assignment or time duration for which the employee was hired. (*Smith v. Srtp.Ct. (L'Oreal)* (2006) 39 Cal.4th 77, 90 [fashion model hired for one-day assignment entitled to payment at end of day].)

10. If an employer willfully fails to pay "without abatement or deduction" wages due to an employee who quits or is discharged, the employee's wages continue as a penalty until paid, for up to 30 days. (Lab.C. section 203; see *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [unpaid wages accrue on a daily basis, not only on days that the employee might have worked, but also on non-workdays].)

11. In engaging in the aforesaid conduct, Defendants, and each of them, have violated, and/or have caused to be violated, several Labor Code provisions, and are therefore liable for civil penalties under California Labor Code § 2698 et seq.

12. Plaintiff has complied with and exhausted all administrative remedies by sending a certified letter to the PAGA (Private Attorney Generals Acts of 2004) Administrator and also his employers, Defendants, and each of them, as well as paying the requisite filing fee. Plaintiff's claim number is LWDA-CM-786848-20. A true and correct copy of Plaintiff's letter, dated May 15, 2020, is attached herewith as Exhibit A.

13. The LWDA did not provide notice of its intention to investigate Defendants' alleged violations within the time provided in Labor Code section 2699.3(a)(2)(A).

CAUSE OF ACTION

**VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT (LABOR CODE
SECTIONS 2698, ET SEQ.) AS AGAINST ALL DEFENDANTS**

14. Plaintiff incorporates each and every other allegation of this Complaint as though fully set forth herein.

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DATED: September 2, 2020

Sam P. Kess

SANFORD A. KASSEL
GAVIN P. KASSEL
Attorneys for Plaintiff
Esteban Acuña

EXHIBIT A

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Joseph A. Katz
Superior Court Judge (Ret.)
Of Counsel

Sanford A. Kassel
Gavin P. Kassel
Attorneys at Law

May 15, 2020

SENT VIA CERTIFIED MAIL- RETURN RECEIPT REQUESTED

Personnel Manager
SPRINT STORE
6200 Sprint Parkway
Overland Park, KS 66251

PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

General Counsel
SPRINT STORE ARBITRATION OFFICE
12502 Sunrise Valley Drive
Mailstop VARESA0202-2C682
Reston, Virginia 20191

Re: *PAGA Notice pursuant to California Labor Code Section 2699*

Dear Sir or Madam:

Please be advised that this office represents Esteban Acuña in connection with his employment claims against Sprint. The purpose of this letter is to advise you of Sprint's violations of the Labor Code and the Private Attorneys General Act of 2004.

Specifically, Sprint failed to provide final wages to Mr. Acuña and all similarly aggrieved employees of Sprint who, like Mr. Acuña, were terminated, and not provided with final wages due to them on the day of their termination. Such conduct violates California law, including Labor Code Sections 201, 202, and 203.

California Labor Code §§ 201-202 and 208 govern payment upon termination of employment. Where the employer willfully violates the provisions of §§ 201-202 regarding timing of payment, § 203 provides "waiting time penalties" of up to 30 days' wages.

Place of payment at termination is "at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor." (Lab.C. § 208.)

Sprint Store General Counsel
Sprint Store Personnel Manager
PAGA Administration
Re: Esteban Acuña
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An employer who discharges an employee must immediately pay all compensation due and owing. (Lab.C. § 201(a).) "Discharge" includes not only involuntary termination from an ongoing employment relationship but also release of an employee upon completion of a specified job assignment or time duration for which the employee was hired. (*Smith v. Sup.Ct. (L'Oreal)* (2006) 39 Cal.4th 77, 90 [fashion model hired for one-day assignment entitled to payment at end of day].)

If an employer willfully fails to pay "without abatement or deduction" wages due to an employee who quits or is discharged, the employee's wages continue as a penalty until paid, for up to 30 days. (Lab.C. § 203; see *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [unpaid wages accrue on a daily basis, not only on days that the employee might have worked, but also on nonworkdays].)

CONCLUSION

Sprint has violated or has caused to be violated one or more California Labor Code and other provisions. Mr. Acuña requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Mr. Acuña requests the agency inform him if it does not intend to investigate these violations so that he may pursue these violations in a civil court of law as discussed in this letter.

Very truly yours,
SANFORD A. KASSEL, APLC



Gavin P. Kassel, Esq.
Attorneys for Esteban Acuña

GPk:lj

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Joseph A. Katz
Superior Court Judge (Ret.)
Of Counsel

May 15, 2020

VIA CERTIFIED MAIL

Personnel Manager

SPRINT STORE

6200 Sprint Parkway

Overland Park, KS 66211

Re: *Esteban Acuña*

Dear Sir or Madam:

Please be advised that this office represents Esteban Acuña in connection with his employment claims against Sprint.

At the outset, please be advised that we previously requested Mr. Acuña's employment records but, to date, have received no response from you. Mr. Acuña has a right to his records pursuant to law. For instance, Labor Code § 1198.5 provides that (with limited exception): "Every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

The employer must make the personnel file/performance documents available to the worker or his representative within 30 days from the date it receives a written request. If the employer fails to comply, the employee can recover a \$750 penalty from the employer. (Labor Code § 1198.5(k).) In addition, under Labor Code § 432, an employee is entitled to obtain copies of all documents he signed relating to his obtaining or holding of employment. Further, Labor Code §§ 226 (b) and (c) require that an employer provide an employee (current or former) access to inspect or a copy of all payroll records within 21 days of an oral or written request (it may provide a copy at actual cost). If the employer fails to comply with the request within the allowed time, the employee can recover a \$750 penalty from the employer. (Labor Code § 226(f).)

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Re: Esteban Acuña
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In the meantime, please be advised that Mr. Acuña intends to assert claims against Sprint for (1) Failure to produce employment records upon request (Labor Code Sections 226 and 1198.5), (2) Wrongful Termination, (3) Unlawful Retaliation, and (4) Failure to Pay Wages Due upon Termination.

The basis for these claims is as follows: The record will show that Mr. Acuña had no issues until Tatiana Flores started her tenure with Sprint as a District Manager. Mr. Acuña and other employers were then encouraged to engage in various fraudulent and unethical practices, such as changing plans without consulting customers to get additional products sold, or telling customers that they were part of a plan when they were not part of such plan. Ms. Flores frequently showed favoritism towards those managers that followed her unethical or "best" practices. Other "best" practices included telling customers that taxes were being charged and instead selling accessories to meet quotas, and removing social security numbers and creating accounts with false or missing information to manipulate credit approvals. Employees who did not agree to such practices were singled out and treated differently.

In mid/late 2019 as the performance from the district started to take a fall dramatically (mainly due to deactivations from the fraudulent activity), Ms. Flores called Mr. Acuña to tell him that she was receiving a lot of pressure from her boss for the performance and will be writing up managers to make some noise. This was her way of showing that she wanted to show her supervisor she was managing the situation. Ms. Flores pushed unethical practices which included timesheet manipulation.

Mr. Acuña spoke with Ms. Flores on the phone and in-person regarding his stand on these issues and told her that he did not feel comfortable practicing or coaching his employees on such behavior. Because Mr. Acuña refused to participate in Ms. Flores' fraudulent activity, she came to his store on his days off to encourage and teach his employees how to engage in fraudulent activity (as they told Mr. Acuña). Ms. Flores also removed Mr. Acuña's assistant manager twice and placed assistance managers that were known for engaging in unethical practices as noted above. Ms. Flores also removed employees from Mr. Acuña's store and replaced them with employees that caused too many problems at other locations. Finally, Ms. Flores threatened Mr. Acuña on a regular basis with termination along changing his employment status from non-exempt to exempt to avoid any overtime payments and quota modification. Ms. Flores' conduct in this regard caused Mr. Acuña much anxiety and distress, and he even had to go to Urgent Care after one shift at which time he was told by the physician that he was suffering from anxiety attacks and needed medication. Significantly, Mr. Acuña never had any medical condition of this kind until Ms. Flores started to attack him.

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Furthermore, in late summer of 2019, Mr. Acufia learned that he would need surgery for an unrelated condition. Surgery was scheduled for December of 2019. Mr. Acufia called Sprint HR team to inform them and receive a short-term disability package. After Ms. Flores learned of the request, she appeared at his store within hours to write him up with a final warning towards his termination.

Mr. Acufia underwent surgery on December 16, 2019 and returned to work on January 27, 2020. While he was out on disability, he contacted the HR team multiple times as he was not receiving any payments as promised. Mr. Acufia was ultimately terminated on January 28, 2020 under the false pretense that his performance had been poor. He did not receive his final compensation check with floating holiday hours until January 31, 2020, and his back pay from short term disability until February 7, 2020. His final prorated commission check was not provided to him until February 28, 2020.

Mr. Acufia had no issues with previous management, and there were no corrective actions until Ms. Flores took adverse action against him due to his refusal to participate in her fraudulent practices and going on disability during the holiday season.

The foregoing conduct gives rise to the four claims identified above:

1. Failure to produce employment records: See discussion above;
2. Wrongful termination: Wrongful termination in violation of public policy is a common law tort legitimized in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178. *Tameny* claims allow recovery of damages for wrongful termination when the termination is undertaken in violation of a fundamental, substantial and well-established public policy of state law grounded in a statute or constitutional provision. (See *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1094-1095, disapproved on other grounds in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6; *Kelly v. Methodist Hospital of So. California* (2000) 22 Cal.4th 1108, 1112.)

Here, Mr. Acufia's claim for wrongful termination is specifically tethered to his retaliation claim as provided by statutory law and set forth below.

3. Violation of Labor Code section 1102.5: On October 12, 2013, then California Governor Jerry Brown signed into law SB 496, which, along with two other new laws (SB 666 and AB 263), expands protections for whistleblowers in California by significantly altering California Labor Code Section 1102.5, California's general whistleblower statute. The amendments became effective January 1, 2014.

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Before it was amended, Labor Code section 1102.5 already prohibited employers from retaliating against employees who reported reasonably believed violations of state or federal laws, rules, or regulations to a government or law enforcement agency. SB 496 extends this protection to employees who report suspected illegal behavior: (1) internally to “a person with authority over the employee” or to another employee with the authority to “investigate discover, or correct” the reported violation; or (2) externally to any “public body conducting an investigation, hearing, or inquiry.” Additionally, SB 496 declares unlawful any employer’s rule, regulation, or policy that prevents the disclosure of reasonably-believed violations of local (in addition to state and federal) laws, rules, or regulations. Labor Code section 1102.5, as amended, now states:

“(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. [emphasis added]”

The ultimate issue when discriminatory discharge is alleged is what were the employer's true reasons for terminating the employee. (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 715 [“The central issue is and should remain whether the evidence as a whole supports a reasoned inference that the challenged action was the product of discriminatory or retaliatory animus.”].) “If the employer has met its burden by showing a legitimate reason for its conduct, the employee must demonstrate a triable issue by producing substantial evidence that the employer's stated reasons were untrue or pretextual, or that the employer acted with a discriminatory animus, such that a reasonable trier of fact could conclude that the employer engaged in intentional discrimination or other unlawful action.” (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1038.)

In *Mamou*, *supra*, 165 Cal.App.4th 686 the court stated, “evidence that the employer's claimed reason is false—such as that it conflicts with other evidence, or appears to have been contrived after the fact—will tend to suggest that the employer seeks to conceal the real reason for its actions, and this in turn may support an inference that the real reason was unlawful.” (*Id.* at p. 715.).

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"There will seldom be 'eyewitness' testimony as to the employer's mental processes." (*U.S. Postal Service Bd. of Governors v. Aikens* (1983) 460 U.S. 711, 716, 103 S.Ct. 1478, 75 L.Ed.2d 403.) "In discrimination cases, proof of the employer's reasons for an adverse action often depends on inferences rather than on direct evidence. 'An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.'" (Evid.Code, § 600, subd. (b).)

As other courts have observed, the causal link between the employee's protected action and the employer's adverse action may be established by an inference derived from circumstantial evidence such as: the employer's knowledge that the employee engaged in protected activities; the proximity in time between the protected action and allegedly retaliatory employment decision (*Morgan v. Regents of Univ. of Calif.* (2000) 88 Cal.App.4th 52, 69); and a pattern of conduct consistent with a retaliatory intent (e.g., hostile treatment, exclusion from meetings). (*Wysinger v. Automobile Club of So. Calif.* (2007) 157 Cal.App.4th 413, 421.)

The employer's knowledge that the employee had engaged in a protected activity is essential to the required causal link. (*Morgan v. Regents of Univ. of Calif.*, *supra*, 88 Cal.App.4th at 70.) In *Morgan*, for instance, the plaintiff claimed his several applications to be rehired were rejected in retaliation for his having previously filed EEOC charges against his employer. The claim failed because there was no evidence that the decision-makers who denied his applications knew of the prior EEOC charges. (*Morgan v. Regents of Univ. of Calif.*, *supra*, 88 Cal.App.4th at 73.)

Furthermore, causation may be established based solely on the timing of the relevant actions: "Specifically, when adverse employment decisions are taken within a reasonable period of time after complaints of discrimination have been made, retaliatory intent may be inferred." (*Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir. 2000) 212 F.3d 493, 507.) Either direct or circumstantial evidence may satisfy plaintiff's burden as to pretext. A small amount of direct evidence (i.e., a single remark) may show the employer's intent to retaliate. (*Fierros v. Texas Dept. of Health* (5th Cir. 2001) 274 F.3d 187, 195 [supervisor's statement that plaintiff was not going to get a pay raise because she filed a discrimination complaint against him].)

Here, there is a close proximity in time between the protected action and Sprint's retaliatory employment decisions (*Morgan v. Regents of Univ. of Calif.* (2000) 88 Cal.App.4th 52, 69), and a pattern of conduct consistent with a retaliatory intent (e.g., hostile treatment, etc.). (*Wysinger v. Automobile Club of So. Calif.* (2007) 157 Cal.App.4th 413, 421.)

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Re: Esteban Acuña
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4. Failure to Pay Wages When Due: Sprint failed to provide final wages to Mr. Acuña when he was terminated, and otherwise failed to provide him with all wages as they became due as discussed in this letter.

California Labor Code §§ 201-202 and 208 govern payment upon termination of employment. Where the employer willfully violates the provisions of §§ 201-202 regarding timing of payment, § 203 provides "waiting time penalties" of up to 30 days' wages.

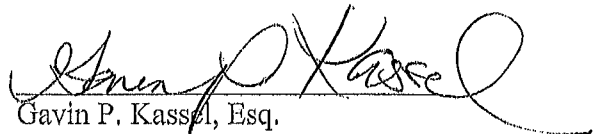
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If an employer willfully fails to pay "without abatement or deduction" wages due to an employee who quits or is discharged, the employee's wages continue as a penalty until paid, for up to 30 days. (Lab.C. § 203; see *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 493 [unpaid wages accrue on a daily basis, not only on days that the employee might have worked, but also on nonworkdays].)

In closing, please be advised that we are unaware of any arbitration agreement between Mr. Acuña and Sprint. However, should you assert that such an agreement exists, it is hereby requested that you provide it to us within 14 days from receipt of this letter. To the extent there is a valid arbitration agreement, please also be advised that this letter shall serve as a formal **DEMAND** for arbitration. In this regard, we expect Sprint to fully comply with, among things, Code of Civil Procedure Section 1281.97, and that all arbitration fees be paid by Sprint within 30 days following receipt of this letter.

Very truly yours,
SANFORD A. KASSEL, APLC


Gavin P. Kassel, Esq.
Attorneys for Esteban Acuña

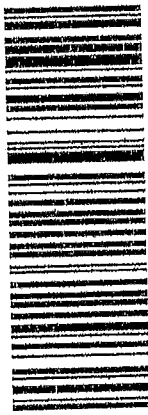
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