



THE DION-KINDEM LAW FIRM

EMAIL: PETER@DION-KINDEMLAW.COM

May 5, 2020

Via Certified Mail, Return Receipt Requested

Labor & Workforce Development Agency
Attn: PAGA Administrator
pagafileings@dir.ca.gov

Walmart, Inc.
708 SW 8th Street
Bentonville Ar 72716

Re: Notice of California Labor Code violations

Peter R. Dion-Kindem, P.C. and the Blanchard Law Group, APC represent Andres Campos. Pursuant to the provisions of Labor Code Sections 2699, *et seq.*, please be advised that during Mr. Campos' employment, Walmart, Inc. violated the provisions of the California Labor Code as set forth in Addendum 1 hereto.

THE DION-KINDEM LAW FIRM

A handwritten signature in black ink that reads 'Peter R. Dion-Kindem'. The signature is written in a cursive, flowing style.

PETER R. DION-KINDEM, P.C.
PETER R. DION-KINDEM

ADDENDUM 1

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I. THE EMPLOYER PARTIES

Walmart, Inc. (“Walmart” or “Defendant”) is a Delaware corporation with its principal place of business located at 708 SW 8th Street, Bentonville Ar 72716. Walmart operates from locations throughout the United States, including San Bernardino County in California.

II. THE EMPLOYEES

A. Andres Campos

Andres Campos (“Campos” or “Plaintiff”) is a California resident. Defendant hired Plaintiff to work as an order stocker, and Plaintiff worked in Defendant’s warehouse located in Chino, California within the last year. Plaintiff’s employment terminated in or around December 16, 2019.

Pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (the “PAGA”), Plaintiff is entitled to recover civil penalties on behalf of Plaintiff and other persons who are or were employed by the alleged violators and against whom one or more of the alleged violations was committed.

One or more of the alleged violations set forth below was committed against Plaintiff, and Plaintiff is therefore an “aggrieved employee” under Labor Code Section 2699(c), which provides in relevant part:

(c) For purposes of this part, “aggrieved employee” means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

B. Aggrieved Employees

The Aggrieved Employees include, but are not limited to, Plaintiff and all other non-exempt workers who were employed by Defendant in California during the applicable statute of limitations period.

III. LABOR LAW VIOLATIONS

Some of the violations of the California Labor Code that were committed and/or are currently being committed by Defendants are set forth below.

A. Defendants failed to compensate Plaintiff and other Aggrieved Employees for all hours worked.

1. Applicable Law

Labor Code Section 1197 in relevant part provides:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.

Paragraph 4(B) of the applicable Wage Order provides: “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage **for all hours worked** in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” (Emphasis added.)

Paragraph 2(G) of the applicable Wage Order defines “hours worked” as follows:

(G) “Hours worked” means the time **during which an employee is subject to the control of an employer**, and includes all the time the employee is suffered or permitted to work, whether or not required to do so. (Emphasis added.)

In *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 [258 Cal.Rptr.3d 392, 406–407, 457 P.3d 526, 538], the California Supreme Court held that Apple employees who were required to go through a security check-out exit process after they clocked out for the day, *i.e.*, waiting in line and going through a security bag check exit process, were entitled to be paid for such time. The Court held:

. . . it is clear that plaintiffs are subject to Apple’s control while awaiting, and during, Apple’s exit searches. Apple’s exit searches are required as a practical matter, occur at the workplace, involve a significant degree of control, are imposed primarily for Apple’s benefit, and are enforced through threat of discipline. Thus, according to the “hours worked” control clause, plaintiffs “must be paid.” (*Bono, supra*, 32 Cal.App.4th at p. 975, 38 Cal.Rptr.2d 549.) . . . [Apple] must compensate those employees to whom the policy applies for the time spent waiting for and undergoing these searches. (*Id.*, at 1056–1057.)

Plaintiff also contends that during Plaintiff’s and Aggrieved Employees’ meal periods, Defendant did not “relinquish all control” over their activities because Defendant restrained employees from leaving the work premises without passing through the mandatory security exit procedures. In *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968, 968–72 (38 Cal.Rptr.2d 549) *disapproved of on other grounds by Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557 (59 Cal.Rptr.2d 186, 927 P.2d 296), the court considered a policy where workers were required to remain on the work-site premises during their 30-minute lunch period unless they made prior arrangements to reenter the plant after leaving for lunch. The workers were relieved of all work duties during their lunch period and an on-site cafeteria, as well as relaxation facilities, were available for their use during lunch periods. (*Bono*, 32 Cal.App.4th at 972, 38 Cal.Rptr.2d 549.)

The *Bono* court focused solely on the “subject to the control of an employer” clause of the “hours worked” definition. (*Id.* at pp. 974–975, 38 Cal.Rptr.2d 549.) Relying on the dictionary definition of “control,” the Court interpreted the clause to mean when an employer “directs, commands or restrains” an employee. (*Id.* at p. 975, 38 Cal.Rptr.2d 549.) Thus, the Court concluded that “[w]hen an employer directs, commands or restrains an employee from leaving the work place during his or her lunch hour and thus prevents the employee from using the time effectively for his or her own purposes, that employee remains subject to the employer’s control. According to [the definition of hours worked], that employee must be paid.” (*Ibid.*) Notably, the Court found “control” even though the employees could leave the premises if they obtained the employer’s permission to do so by making previous arrangements.

2. Facts

Once Plaintiff arrived at the facility, Plaintiff was required to pass through a turnstile. Plaintiff was required to scan his employee's badge to pass through the turnstile and then walk past the security desk on his way to the breakroom. Plaintiff would then clock in by scanning his badge at a time clock.

To exit the facility for any reason, including meal periods, rest periods, or after the shift was over, Plaintiff first clocked out and was required to pass through the metal detector and place his belongings in a tray for inspection by security personnel. This included his phone, which security personnel had to inspect so as to recognize it as Plaintiff's phone. Security personnel would also inspect Plaintiff's clear plastic bag into which personal items were required to be placed. They also looked through women's purses.

Here, Defendant was required to relinquish **all control** over Plaintiff and Aggrieved Employees during their meal periods. By requiring employees to pass through the mandatory security exit to leave the facilities during their meal periods, however, Defendant necessarily asserted control over them during their meal periods – they restrained them from leaving the worksite without Defendant's "permission," *i.e.*, without successfully passing through the Defendant's mandatory security exit process. The time of such meal periods, therefore, constitutes "hours worked" because class members were under Defendant's control. Defendant was therefore required to pay for this time, which Defendant did not.

Plaintiff and Aggrieved Employees were entitled to be paid for all hours worked, including waiting for and passing through the various security procedures and walking to and from the time clocks and the time of their meal periods. Defendant did not compensate Plaintiff and other Aggrieved Employees for such hours worked and, to the extent such hours worked exceeded eight hours in a day or 40 hours in a week, Defendant did not compensate Plaintiff and other Aggrieved Employees at the correct overtime rate.

B. Defendant violated Defendant's meal period obligations.

1. Applicable Law

California Labor Code Section 512 provides in relevant part:

(a) An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

California Labor Code Section 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Under California law, an employer must provide each non-exempt employee a minimum 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. (Lab. Code § 512; IWC Wage Order No. 7, § 11(A); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 [139 Cal.Rptr.3d 315, 273 P.3d 513].) An employer satisfies this obligation only where “it relieves its employees of all duty, **relinquishes control over their activities** and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so.” (*Brinker* 53 Cal.4th at 1040 (emphasis added).)

A purported “meal period” which does not satisfy these criteria, or which is not provided at the required time in the employee’s workday, does not constitute a meal period as defined by California law. (*Brinker* 53 Cal.4th at 1035-1037, 1049.) An employee who was not provided a meal period or who was provided a purported “meal period” that does not conform to the specific requirements of California law has been deprived of a meal period and is entitled to one hour of pay for each workday the meal period is not provided. (Lab. Code. § 226.7(b); IWC Wage Order No. 7, § 11(B); *Brinker* 53 Cal.4th at 1035-1040.)

2. Facts

An employer who places restrictions on employees’ activities during meal periods thereby effectively preventing them from using such time for their own purposes (here, by restraining them from leaving the premises for meal periods without first going through the mandatory security exit) has not provided the requisite “control free” meal periods. Limiting where an employee can take a meal break is inconsistent with relinquishing control over how employees spend their meal period time. Thus, Defendant has violated Defendant’s meal period obligations and is liable for meal period premiums for each shift for which a meal period was required, *i.e.*, shifts over six hours (Lab. Code § 226.7.)

Defendant failed to pay Plaintiff and the other Aggrieved Employees the compensation due them pursuant to Labor Code Section 226.7 and the applicable Wage Order.

C. Defendant violated Defendant's rest period obligations.

1. Applicable Law

Labor Code Section 226.7 provides:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Paragraph 11 of the applicable Wage Order provides in relevant part:

REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

(B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.

(C) A rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. In cases where a valid collective bargaining agreement provides final and binding mechanism for resolving

disputes regarding enforcement of the rest period provisions, the collective bargaining agreement will prevail.

(E) This section shall not apply to any employee covered by a valid collective bargaining agreement if the collective bargaining agreement provides equivalent protection.

Under California law, an employer must authorize and permit each non-exempt employee a 10-minute rest period for each four hours of work or major fraction thereof. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1028-30 [139 Cal.Rptr.3d 315, 334, 273 P.3d 513, 528-29].

In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269 [211 Cal.Rptr.3d 634, 644, 385 P.3d 823, 832], *as modified on denial of reh'g* (Mar. 15, 2017) (*Augustus*), the Supreme Court interpreted the rest period requirement for security guards. The Court addressed the question of whether the wage order requires employers to provide employees with off-duty rest periods, defined as “time during which an employee is relieved from all work-related duties and free from employer control.” (*Id.*, 2 Cal.5th at p. 264.) The Court answered that question in the affirmative, concluding:

We accordingly conclude that the construction of Wage Order 4, subdivision 12(A) that best effectuates the order’s purpose and remains true to its provisions is one that obligates employers to permit—and authorizes employees to take—off-duty rest periods. ***That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.*** (See *Brinker, supra*, 53 Cal.4th at pp. 1038–1039, 139 Cal.Rptr.3d 315, 273 P.3d 513.) (*Id.* at p. 269 (emphasis added).)

3. Facts

Defendant, through its use of the mandatory security exit procedures, which prevented employees from taking their rest periods “off premises” without going through the mandatory security exit procedures, did not relinquish all control of the employees’ activities during their rest periods. Defendant’s uniformly applied practice of limiting **where** an employee can take a rest break and requiring employees to remain on premises during rest periods is inconsistent with relinquishing control over how employees spend their rest period time.

Defendant failed to pay Campos and the other Aggrieved Employees the compensation due them pursuant to Labor Code Section 226.7 and the applicable Wage Order.

D. Defendant violated Labor Code Sections 201 and 202 by failing to pay Plaintiff and other Aggrieved Employees all wages earned and unpaid at the time of the termination of their employment.

1. Applicable Law

Labor Code Section 201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately...

Labor Code Section 202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

2. Facts

Defendant violated Section 201 or 202 as to Plaintiff and other Aggrieved Employees whose employment terminated by willfully failing to timely pay the wages earned and unpaid upon the termination of their employment.

E. Defendant violated Labor Code Section 203 by failing to pay Plaintiff and other Aggrieved Employees the wages owing pursuant to Labor Code Sections 201 and 202.

1. Applicable Law

Labor Code Section 203 provides:

(a) If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections **201**, 201.3, 201.5, 201.6, 201.8, 201.9, **202**, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who sequesters or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment. (Emphasis added.)

2. Facts

Defendant violated Section 203 as to Plaintiff and other Aggrieved Employees by failing to pay the wages owing to them under Section 201 or 202. Defendant's failure to pay all final wages was willful within the meaning of Labor Code Section 203.

F. Defendant violated Defendant's obligations under Labor Code Section 226(a).

1. Applicable Law

Labor Code Section 226 provides in relevant part:

(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

...

(e)(1) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

(2)(A) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.

(B) An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following:

(i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a).

(ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).

(iii) The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer during the pay period.

(iv) The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

(C) For purposes of this paragraph, “promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

(3) For purposes of this subdivision, a “knowing and intentional failure” does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake. In reviewing for compliance with this section, the factfinder may consider as a relevant factor whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section.

2. Facts

Defendant violated Section 226(a)(1) as to Plaintiff and other Aggrieved Employees by failing to provide them statements of wages that accurately showed gross wages actually earned.

Defendant violated Section 226(a)(2) by failing to provide Plaintiff and other Aggrieved Employees statements of wages that accurately showed the total hours worked by Plaintiff and other Aggrieved Employees.

Defendant violated Section 226(a)(5) by failing to provide Plaintiff and other Aggrieved Employees with statements of wages that accurately showed net wages earned.

Defendant violated Section 226(a)(9) by failing to provide Plaintiff and other Aggrieved Employees with statements of wages that accurately showed the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by failing to accurately show the actual number of hours worked at the applicable hourly rate at which they were to be paid.

G. Defendant violated Labor Code Section 1174 and applicable sections of the applicable Wage Order regarding recordkeeping.

1. Applicable Law

California Labor Code Section 1174 provides in relevant part:

Every person employing labor in this state shall:

. . . (d) 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, and the number of piece-rate units earned by and any applicable piece rate 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. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 1174.5 provides:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of the applicable Wage Order provides in relevant part:

6. RECORDS

(A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following: (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item. (See Labor Code Section 226.) This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

(C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request...

2. Facts

Defendant did not keep accurate records of all information required to be kept by Defendant, including total hours worked by the employees.

By willfully failing to maintain the records required by California Labor Code Section 1174(c), or accurate and complete records required by Section 1174(d), Defendant is liable for a civil penalty of \$500 for each violation.

IV. DEFENDANT IS LIABLE FOR PENALTIES PURSUANT TO PAGA.

Because of Defendant's violations, Defendant is liable for penalties pursuant to Labor Code Sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, *inter alia*.

A. Penalties pursuant to Labor Code Section 210

Labor Code Section 204 provides in relevant part:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the

month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

Labor Code Section 210 provides:

(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, or any willful or intentional violation, two hundred (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

In failing to pay all wages owing Plaintiff and Aggrieved Employees, Defendant violated Section 204 and is therefore liable for the penalties provided by Section 210.

B. Penalties pursuant to Section 226.3 for violation of Section 226

As alleged above, Defendant violated Section 226. Section 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

Section 226.3 sets out a civil penalty for *all* violations of section 226. (*Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 [234 Cal.Rptr.3d 1, 7].)

C. Penalties pursuant to Section 256

Labor Code Section 256 provides:

The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

Where an employer violates Section 203, the employer is liable for penalties pursuant to Section 256 pursuant to PAGA. (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 378 [36 Cal.Rptr.3d 31, 39] (“For example, an employee not fully paid upon discharge or layoff as required by section 201 (one of the Labor Code provisions identified in section 2699.5) may be entitled to recover not only his or her unpaid wages but also the statutory penalty provided by section 203 (another provision listed in section 2699.5) and the civil penalty provided by section 256.”); *Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 340 [47

Cal.Rptr.3d 614, 620]; *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 579 [117 Cal.Rptr.3d 398, 411.]

D. Penalties pursuant to Section 558

Labor Code Section 558 provides:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

E. Penalties pursuant to Section 1197.1

Labor Code Section 1197.1 provides:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

F. Penalties pursuant to Section 2699(f)

Labor Code Section 2699(f) provides:

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, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(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.

Defendant violated Labor Code Section 226.7(a) by failing to provide compliant meal and rest periods. Defendant also violated Labor Code Section 226.7(b) by failing to pay the meal and rest period premiums for missed meal and rest periods.

Because the Labor Code does not provide a civil penalty for violations of Section 226.7(a) or Section 226.7(b), the “default” penalties set forth in Section 2699(f) are applicable to such violations.

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