

NATURE OF THE ACTION

1. Plaintiff VANESSA TICAS worked for NUTIVA and DOES 1-50 (collectively “Defendants”) as a production operator in NUTIVA’s food manufacturing facility in Richmond, California, until May 29, 2020. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendants within one year of serving notice on the LWDA to the present are aggrieved employees.

2. Defendants failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of herself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of her claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

3. Defendants have had a consistent policy and/or practice of: (1) failing to comply with California law concerning payment of lawful wages for all hours worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to provide timely, uninterrupted meal breaks; (4) failing to provide safe working conditions; (5) failing to provide compliant rest breaks and cool-down rest periods; (6) failing to timely pay all wages owed; and (7) failing to provide accurate itemized wage statements and maintain accurate records.

THE PARTIES

7. Plaintiff VANESSA TICAS is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants until May 29, 2020.

8. Defendant NUTIVA is doing business in California with the capacity to sue and to be sued in the county of Contra Costa, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names, Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

11. Venue is proper in this judicial district because Defendants conduct business in this county and each defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

13. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendants are qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

14. During the relevant time-period, Defendants committed various violations of the California Labor Code as alleged below in more detail. Defendants enforced multiple policies

1 that violate state law, which are intended to increase profits to the detriment of aggrieved
2 employees.

3 15. This representative action represents dozens of current and former aggrieved
4 employees.

5 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
6 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
7 numerous Labor Code sections, as set forth more fully below.

8 17. Plaintiff and all current and former employees within one year of filing this action to
9 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
10 code §2699(c)).

11 18. Defendants, and each of them, have committed the following violations of the
12 California Labor Code:

13 **Failure to Comply with California Law Concerning Payment of Lawful Wage for All**

14 **Hours Worked, Including Overtime Hours Worked**

15 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

16 19. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
17 incorporates said paragraphs herein by reference.

18 20. Section 2(H) of Wage Order 1 defines “hours worked” as “the time during which an
19 employee is subject to the control of an employer, and including all the time the employee is
20 suffered or permitted to work, whether or not required to do so.” When employers require
21 employees who are already paid at or near minimum wage are underpaid as a result of failure to
22 properly calculate overtime wage, the result is underpayment for hours worked each pay period,
23 including overtime hours worked. Defendants have also failed to pay the required minimum
24 wage for all hours worked, and has failed to pay all wages owed twice per month.

25 21. Failure to Include Shift Differential and Bonus Pay in Regular Rate of Pay for
26 Calculating Overtime. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor
27 performed by employees of every description, whether the amount is fixed or ascertained by the
28 standard of time, task, piece, commission basis, or other method of calculation.” Defendants fail

1 to include nondiscretionary bonuses and shift differential payment into the regular rate of pay for
2 purposes of calculating overtime.

3 22. Bonuses. Non-discretionary bonuses retroactively increase the employee's "regular
4 rate" of pay for purposes of calculating overtime. (Labor Code §207) The "regular rate" is
5 calculated by dividing the hours worked in a week by all the compensation earned for that week.
6 When an employee is later paid a bonus that is partly due to work performed in that week, this
7 additional pay must be added into the total compensation for the week, increasing the
8 employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

9 23. On 10/11/2019, Plaintiff was paid a nondiscretionary bonus of \$284.67 which was
10 not factored into the regular rate of pay for calculating overtime.

11 24. Shift differentials. When employees are assigned to work an undesirable shift, they
12 are paid a premium of \$.75 per hour. The paystubs confirm that this shift differential is not
13 included in the regular rate of pay for purposes of calculating overtime. Overtime paid to
14 Plaintiff on her wage statements dated 4/10/20 and 11/8/19 evidence that shift differentials are
15 excluded.

16 25. Defendants failed to properly calculate and pay overtime compensation, making no
17 adjustment to overtime rates reflected in any of Plaintiff or aggrieved employees' paystubs.
18 Plaintiff and other employees have been denied "the unpaid balance of the full amount of this...
19 overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Defendants
20 violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
21 Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a
22 violation of the labor code to fail to comply with a wage order.

23 26. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
24 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
25 to Labor Code § 204(a). Defendants failed to pay all wages earned to employees as a result of the
26 unlawful employment policies and practices discussed herein. As a result of these practices,
27 employees were underpaid for hours worked, including penalty wages, and this underpayment
28 resulted in a failure to pay all wages owed twice per month.

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

28. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

29. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendants' practices described above. During this time spent waiting, employees were paid zero wages. Defendants' failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §§1197, 1197.1, 1199 and Wage Order 9-2001 4(B). Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

31. During Plaintiff's employment, Defendants failed to maintain a complaint meal period policy and practice. Defendants failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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 . . ."

32. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal . . . period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code §1198 makes it

1 unlawful for an employer to employ an employee for longer hours than those fixed by the wage
2 order or under conditions of labor prohibited by the order.

3 33. Defendants failed to permit Plaintiff and others to take timely, off-duty, meal breaks
4 of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
5 §§226.7, 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were
6 inaccurate, failing to include required meal period penalties, thus failing the requirements of
7 Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties
8 pursuant to Cal. Labor Code §558 and §2698 et. seq.

9 **Failure to Provide Safe Working Conditions**

10 (Cal. Labor Code §1198, Wage Order 1 ¶15)

11 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 35. Defendants’ facility is located in Richmond, California, where it gets exceedingly hot
14 in the summer. Defendants’ manufacturing facility did not have any air conditioning or
15 dehumidifiers.

16 36. The only climate control solutions provided to employees were industrial fans which
17 only circulated the hot air. Fans were not provided in all locations because in some workspaces,
18 like the protein line, fans would blow around the powder, so the employees were left to work in
19 the heat. Plaintiff and aggrieved employees worked in unbearable heat in the facility.

20 37. Wage Order 1, ¶15 requires:

21 (A) The temperature maintained in each work area shall provide reasonable comfort
22 consistent with industry-wide standards for the nature of the process and the work
23 performed.

24 (B) If excessive heat or humidity is created by the work process, the employer shall take
25 all feasible means to reduce such excessive heat or humidity to a degree providing
26 reasonable comfort.
27
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1 38. Labor Code §1198 makes it unlawful to employ employees in conditions prohibited
2 by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant
3 to §2698 *et seq.*

4 **Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods**

5 (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9 ¶15.)

6 39. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 40. Defendants have failed to maintain a policy and practice that provides or permits its
9 employees to take off-duty rest periods as required by California law. Employees are entitled to
10 at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab.
11 Code §§226.7, 512 and Wage Order 1

12 41. Plaintiff and aggrieved employees did not receive the required 10-minute,
13 uninterrupted breaks because they were required to take off their safety apparel which takes
14 approximately three minutes. They then have to walk to the break room. Plaintiff and aggrieved
15 employees are shorted this donning and doffing time.

16 42. Title 8 of the California Code of Regulations covers standards for indoor heat
17 exposure. Section 3203 requires that employers take the steps necessary to protect employees'
18 health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code §226.7
19 requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. If
20 breaks do not comply, the employer has violated California's rest break requirements.

21 43. Defendants failed to pay Plaintiff and similarly situated employees all premium
22 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
23 periods) mandated by Labor Code §226.7(b) for these uncompliant rest periods. As a derivative
24 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
25 penalties, thus failing the requirements of Labor Code §§226(a) and 1198. As a result of these
26 violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698
27 *et seq.*

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1 49. Labor Code §1174 provides that “[e]very employer employing labor in this state shall
2 . . . (c) [k]eep a record showing the names and addresses of all employees employed and the ages
3 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
4 which employees are employed, payroll records showing the hours worked daily by and the
5 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
6 employees employed at the respective plants or establishments. These records shall be kept in
7 accordance with rules established for this purpose by the commission, but in any case, shall be
8 kept on file for not less than two years.”

9 50. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
10 wage statements to Plaintiff and the aggrieved employees in accordance with Labor §§226 and
11 1174. As a result of the unlawful employment practices discussed herein, the statements
12 provided to Plaintiff and aggrieved employees have not accurately reflected actual gross wages
13 earned, including overtime and meal/rest premiums and total regular and overtime hours worked.

14 51. Wage statements were insufficient because they did not state the total hours worked.
15 The manner in which pay per hour is listed is unclear, including the holiday pay listed on
16 Plaintiff’s 9/13/19 wage statement. Plaintiff’s final wage statement dated 5/29/20 does not
17 indicate the hourly rates of pay.

18 52. Such failures caused injury to Plaintiff and aggrieved employees, by, among other
19 things, impeding them from knowing the total hours worked and the amount of wages to which
20 they are and were entitled. Defendants’ unlawful employment practices were knowing and
21 intentional, and thus Defendants knowingly and intentionally failed to itemize the gross wages
22 earned, net wages earned, penalty pay, and total hours worked. Defendants are liable for civil
23 penalties pursuant to Labor Code §2699 *et seq.*

24 53. Through this representative action, Plaintiff will advance the interests of dozens of
25 current and former employees, such that joinder is impracticable. These current and former
26 employees can be readily identified through a review of Defendants’ payroll records and the
27 records of the company that handles payroll for Defendants.
28

1 54. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

4 **FIRST CAUSE OF ACTION**

5 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**
6 **(California Labor Code §2698 *et seq.*)**

7 55. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 56. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
10 Defendants during the applicable statutory period and suffered one or more of the Labor Code
11 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all
12 other current and former aggrieved employees of Defendants, the civil penalties provided by
13 PAGA, plus reasonable attorneys’ fees and costs.

14 57. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
16 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

17 58. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
18 Code provisions:

- 19 a. Failure to Comply with California Law Concerning Payment of Lawful Wage for
20 All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218,
21 510, 558, 1194, 1197, 1998, 1999, 2698 *et seq.*);
- 22 b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
23 1194.2, 1197, 1197.2, 1198, 1999, 2698 *et seq.*);
- 24 c. Failure to Provide Timely, Uninterrupted Meal Breaks (Cal. Labor Code §§226,
25 226.7, 512, 1199, 2698 *et seq.*);
- 26 d. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage
27 Order 9 ¶ 15);
- 28 e. Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods (Cal.
Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9
¶15);

1 f. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§210, 202, 203, 1199
2 and 2698 *et seq.*); and

3 g. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§226,
4 1174, 1199, 2699 *et seq.*).

5 59. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
6 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
7 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
8 employee for each subsequent violation of Labor Code §226(a).

9 60. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
10 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
11 violations for each underpaid employee for each pay period for which the employee was
12 underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid
13 employee for each pay period for which the employee was underpaid.

14 61. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
15 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
16 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
17 which a civil penalty is not specifically provided.

18 62. Plaintiff and the other current and former employees of Defendants are aggrieved
19 employees. They were or are employed by Defendants, and each of them, and the violations
20 alleged herein were committed against them. Plaintiff brings this action on behalf of herself and
21 all other current and former aggrieved employees.

22 63. At the time of each violation, Defendants employed one or more employees.

23 64. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of
24 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
25 determined at trial, pre-judgment interest, costs and attorneys' fees.

26 65. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
27 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
28 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,

1 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
2 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice
3 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
4 Pursuant to Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on
5 behalf of aggrieved employees and the State of California.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
8 for judgement against Defendants as follows:

- 9 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
10 determined at trial, but at least the jurisdictional amount of this Court;
11 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
12 §2699(g) and/or other applicable law;
13 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
14 law;
15 4. Pre-judgement and post-judgement interest as provided by law; and
16 5. Such other and further relief that the Court may deem just and proper.

17 DATED: December 2, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**

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22 BY: Nazo Koulloukian, Esq.
23 Attorneys for Plaintiff VANESSA TICAS, and all
24 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

August 28, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail and Email:

Nutiva
c/o Linda Moroney
Gordon Rees Scully Mansukhian, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111
Lmoroney@grsm.com

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Vanessa Ticas
Employer: Nutiva

Dear Sir or Madam:

Vanessa Ticas (hereafter “Ticas” or “Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for wage and hour claims against her employer Nutiva (“Employer”).

Nutiva is a plant-based food company (www.nutiva.com) that employed Ms. Ticas as a Production Operator in Nutiva’s food manufacturing facility where she worked until 5/29/2020.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(H) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employers require employees who are already paid at or near minimum wage are underpaid as a result of failure to properly calculate overtime wage, the result is underpayment for hours worked each pay period, including overtime hours worked. Nutiva has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Nutiva has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Nutiva is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Include Shift Differential and Bonus Pay in Regular Rate of Pay for Calculating Overtime

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Nutiva fails to include nondiscretionary bonuses and shift differential payment into the regular rate of pay for purposes of calculating overtime.

Bonuses. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.) On 10/11/2019, Ticas was paid a nondiscretionary bonus of \$284.67 which was not factored into the regular rate of pay for calculating overtime.

Shift differentials. When employees are assigned to work an undesirable shift, they are paid a premium of \$.75 per hour. The paystubs confirm that this shift differential is not included in the regular rate of pay for purposes of calculating overtime. Overtime paid to Claimant on her wage statements dated 4/10/20 and 11/8/19 evidence that shift differentials are excluded.

Employer has failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Claimant or aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order.

Failure to Pay All Wages Owed Twice Per Month

Nutiva was required to pay Ticas and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Nutiva failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Ticas and aggrieved employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order. Nutiva failed to pay Claimant and aggrieved employees for all hours worked as a result of Nutiva's practices described above. Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 et seq.)

During Claimant's employment, Nutiva failed to maintain a compliant meal period policy and practice, failing to provide all its hourly employees with their right to take a timely, off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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..."

Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Wage Order 1 provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code §1198 makes it unlawful for an employer to employ an employee for longer hours than those fixed by the wage order or under conditions of labor prohibited by the order.

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7, 512, and 1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 9 ¶15.)

Employer's warehouse is located in Richmond, California, in a manufacturing facility that did not have any air conditioning or dehumidifiers. The only climate control solutions provided to employees were industrial fans which only circulated the hot air. Fans were not provided in all locations because in some workspaces, like the protein line, fans would blow around the powder, so the employees were left to work in the heat. Claimant and her coworkers worked in unbearable heat in the facility.

Wage Order 1 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et seq.*

Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods

(Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq.,

8 CCR 3202, Wage Order 9 ¶15.))

Nutiva has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 9.

Claimant and her coworkers did not receive the required 10 minute, uninterrupted breaks because they were required to take off their safety apparel which takes approximately three minutes. They then have to walk to the break room. Employees are shorted this donning and doffing time.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these uncompliant rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

Nutiva knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Because of Nutiva's unlawful timekeeping practices, Claimant and employees were underpaid and those amounts remained due and owing when they separated from the company.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment within the time periods required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records

(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*)

California Labor Code § 226(a) provides that "[e]very 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 (1) gross wages earned, (2) total hours worked..., (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 ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her social security number..., (8) the name and address of the legal entity that is 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."

Labor Code § 1174 provides that "[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [k]eep 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 two years."

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums and total regular and overtime hours worked.

Wage statements were also insufficient because they did not state the total hours worked. In addition, the manner in which pay per hour is listed is unclear, including the holiday pay listed

on Claimant's 9/13/19 wage statement. Additionally, Claimant's final wage statement dated 5/29/20 does not indicate the hourly rates of pay.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

cc: Sahag Majarian, Esq.