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Attorneys for Plaintiff,
OSCAR GONZALEZ, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

OSCAR GONZALEZ, an individual, on behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys General.

VS.

REPRESENTATIVE ACTION COMPLAINT

N S CORPORATION, a California corporation
and DOES 1-50, inclusive,

Plaintiff OSCAR GONZALEZ brings this PAGA representative action complaint on behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys General, and alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff OSCAR GONZALEZ was a warehouse worker for defendant N S
3 Corporation and DOES 1-50 (collectively “Defendants”). Plaintiff brings this action pursuant to
4 the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a
5 representative basis. All current and former employees of Defendants within one year of serving
6 notice on the LWDA to the present are aggrieved employees.

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

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

THE PARTIES

23 7. Plaintiff OSCAR GONZALEZ is a resident of the State of California and was
24 employed as an hourly, nonexempt employee of Defendants until May 15, 2020.

25 8. Defendant N S CORPORATION is doing business in California with the capacity to
26 sue and to be sued in the county of Los Angeles, State of California.

27 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
28 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is

1 informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
3 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

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

11 **JURISDICTION AND VENUE**

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

15 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
16 the Superior Court and will be established according to proof at trial. Based on information,
17 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
18 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,
19 000).

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

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 14. During the relevant time-period, Defendants committed various violations of the
26 California Labor Code as alleged below in more detail. Defendants enforced multiple policies
27 that violate state law, which are intended to increase profits to the detriment of aggrieved
28 employees.

1 15. Defendant N S CORPORATION is the largest car wash manufacturer on the West
2 Coast serving transit, fleet, and retail operators. This representative action represents dozens of
3 current and former aggrieved employees.

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

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

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

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

13 **Hours Worked, Including Overtime Hours Worked**

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

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

17 20. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an
18 employee is subject to the control of an employer, and including all the time the employee is
19 suffered or permitted to work, whether or not required to do so.” When employers require
20 employees to wait in long lines to clock in and out and then shave time by rounding time entries
21 to the nearest quarter hour, the result is underpayment for hours worked each pay period,
22 including overtime hours worked. Defendants have also failed to pay the required minimum
23 wage for all hours worked, and have failed to pay all wages owed twice per month.

24 21. Off-the-Lock Hours Worked – Waiting in Required Lines. Plaintiff and aggrieved
25 employees frequently worked off the clock and were routinely subjected to periods wherein they
26 were under the Defendants’ control but not compensated for their time. Plaintiff and aggrieved
27 employees were required to clock in using personal cards issued to them at one of Defendants’
28 two timeclocks. Unfortunately, because there were up to 80 employees coming on shift at the

1 same time, and all employees clock in and out for lunch at the same time, Plaintiff and aggrieved
2 employees spend up to five minutes waiting in line four times a day. This time spent waiting in
3 these required lines was required by Defendants and was essential and required before
4 employees could begin and/or resume working on the clock. Defendants have violated Labor
5 Code §§510, 1194, 1198, 1199, and Wage Order 9. Defendants are liable for civil penalties
6 pursuant to Labor Code §§558 and 2698 *et seq.*

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

13 **Failure to Pay Minimum Wage**

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

15 23. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
16 incorporate said paragraphs herein by reference.

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

20 25. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a
21 result of Defendants' practices described above, including forcing employees to wait in long
22 lines before clocking in. During this time spent waiting, employees were paid zero wages.
23 Defendants' failure to pay for all hours worked, including overtime, resulted in a payment of less
24 than the minimum wage for all hours worked, in violation of Labor Code §§1197, 1197.1, 1199
25 and Wage Order 9-2001 4(B). Defendants are liable for civil penalties pursuant to Labor Code
26 §§558 and 2699 *et seq.*

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1 **Failure to Provide Timely, Uninterrupted Meal Breaks**

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

3 26. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 27. During Plaintiff’s employment, Defendants failed to maintain a complaint meal
6 period policy and practice. Defendants failed to provide all of its hourly employees with their
7 right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n
8 employer may not employ an employee for a work period of more than five hours per day
9 without providing the employee with a meal period of not less than 30 minutes . . .”

10 28. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
11 during any meal . . . period mandated by an applicable order of the Industrial Welfare
12 Commission.” Paragraph 11(A) of the Wage Order provides, in pertinent part, “[u]nless an
13 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
14 considered an ‘on duty’ meal period and counted as time worked.” Labor Code §1198 makes it
15 unlawful for an employer to employ an employee for longer hours than those fixed by the wage
16 order or under conditions of labor prohibited by the order.

17 29. Plaintiff’s regular shift was as follows:

18 Shift start time:	6:30 a.m.
19 First rest break:	9:45 a.m.
20 Meal break:	12 p.m.
21 Second rest break:	2 p.m.
22 Shift end time:	3 p.m.

23 30. Pursuant to *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 273 P.3d
24 513, a first meal period must begin no later than the start of an employee’s sixth hour of work.
25 Here, this means the meal break must start no later than 11:30 a.m. All warehouse employees
26 were on this same break schedule, meaning that meal breaks were late every day, for every
27 employee.
28

1 31. Employees were required to wait in line to clock back in at the end of their meal
2 period. In order to be clocked back in on-time, employees had to join the line early, resulting in
3 time spent under the employer's control doing a required task while unpaid and off the clock.
4 Defendants failed to permit Plaintiff and others to take timely, off-duty meal breaks of "not less
5 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7,
6 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were inaccurate,
7 failing to include required meal period penalties, thus failing the requirements of Labor Code
8 §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to Cal.
9 Labor Code §§558 and 2698 *et seq.*

10 **Failure to Provide Safe Working Conditions**

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

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

14 33. Defendants' warehouse is located in Inglewood, California, where temperatures soar
15 year-round, especially in the summer. The warehouse did not have any air conditioning or
16 dehumidifiers. The only climate control solutions provided to employees were industrial fans.
17 Plaintiff and his coworkers worked in unbearable heat and humidity in the warehouse, and
18 complaints to supervisors went unanswered.

19 34. Wage Order 9, ¶15 requires:

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

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

26 35. Labor Code §1198 makes it unlawful to employ employees in conditions prohibited
27 by the wage order. By violating the wage order, Defendants are liable for civil penalties pursuant
28 to §2698 *et seq.*

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

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

3 36. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

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

9 38. Plaintiff often received his rest periods late as a result of the press of work,
10 approximately two times per week. When breaks were provided, they were not complaint
11 because all employees went on break at the same time and the break room only had two tables,
12 each with six chairs. This room accommodates no more than 25% of the employees on break. As
13 mentioned above, the warehouse did not have any air conditioning or dehumidifier, and
14 employees worked in intolerable heat and humidity. Title 8 of the California Code of
15 Regulations covers standards for indoor heat exposure. Section 3203 requires that employers
16 take the steps necessary to protect employees' health and safety when the temperature exceeds
17 85 degrees in the workplace. Labor Code §226.7 requires that breaks comply with requirements
18 of the wage orders, OSHA, and the DOSHA. If breaks do not comply, the employer has violated
19 California's rest break requirements.

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

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1 45. 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 46. 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 47. Such failures caused injury to Plaintiff and others, by, among other things, impeding
15 them from knowing the total hours worked and the amount of wages to which they are and were
16 entitled. Defendants’ unlawful employment practices were knowing and intentional, and thus
17 Defendants knowingly and intentionally failed to itemize the gross wages earned, net wages
18 earned, penalty pay, and total hours worked. Defendants are liable for civil penalties pursuant to
19 Labor Code §2699 *et seq.*

20 48. Through this representative action, Plaintiff will advance the interests of hundreds of
21 current and former employees, such that joinder is impracticable. These current and former
22 employees can be readily identified through a review of Defendants’ payroll records and the
23 records of the company that handles payroll for Defendants.

24 49. Plaintiff seeks to recover the PAGA civil penalties through a representative action
25 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
26 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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1 **FIRST CAUSE OF ACTION**

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

4 50. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
5 incorporate said paragraphs herein by reference.

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

11 52. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 53. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Comply with California Law Concerning Payment of Lawful Wage for
17 All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218,
18 510, 558, 1194, 1197, 1998, 1999, 2698 *et seq.*);
- 19 b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
20 1194.2, 1197, 1197.2, 1198, 1999, 2698 *et seq.*);
- 21 c. Failure to Provide Timely, Uninterrupted Meal Breaks (Cal. Labor Code §§226,
22 226.7, 512, 1199, 2698 *et seq.*);
- 23 d. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage
24 Order 9 ¶ 15);
- 25 e. Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods (Cal.
26 Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*, 8 CCR 3202, Wage Order 9
27 ¶15);
- 28 f. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§210, 202, 203, 1199
and 2698 *et seq.*); and
- g. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§226,
1174, 1199, 2699 *et seq.*).

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

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

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

14 57. Plaintiff and the other current and former employees of Defendants are aggrieved
15 employees. They were or are employed by Defendants, and each of them, and the violations
16 alleged herein were committed against them. Plaintiff brings this action on behalf of himself and
17 all other current and former aggrieved employees.

18 58. At the time of each violation, Defendants employed one or more employees.

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

22 60. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
23 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
24 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
25 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
26 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice
27 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
28

Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

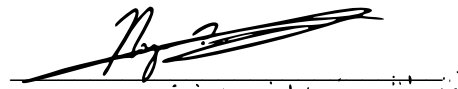
PRAYER FOR RELIEF

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

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

DATED: October 26, 2020

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



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff OSCAR GONZALEZ, and
all 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 20, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Christopher Cato
John E. Solis
Gordon Rees Scully Mansukhani
101 W. Broadway, Suite 2000
San Diego, CA 92101
D: 619-230-7478 | jsolis@grsm.com

N/S Corporation
235 W. Florence Avenue
Inglewood, CA 90301

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Oscar Gonzalez
Employer: N S Corporation

Dear Sir or Madam:

Oscar Gonzalez (hereafter “Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him, and all other aggrieved employees, for wage and hour claims against his employer N S Corporation, hereafter “Employer.”

Employer is the largest car wash manufacturer on the West Coast, serving transit, fleet, and retail operators. Claimant worked in Employer’s warehouse located in Inglewood, California, until May 15, 2020, when he was laid off in connection with a company-wide layoff.

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 §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 et seq.)

Section 2(H) of Wage Order 9 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 to wait in long lines to clock in and out and then shave time by rounding time entries to the nearest quarter hour, the result is underpayment for hours worked each pay period, including overtime hours worked. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked- Waiting in Required Lines

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to clock in using personal cards issued to them at one of Employer’s two timeclocks. Unfortunately, because there were up to 80 employees coming on shift at the same time, and all employees clock in and out for lunch at the same time, and all employees end their shift at the same time, Claimant and aggrieved employees spend up to five minutes waiting in line four times per day. This time spent waiting in these required lines was required by Employer and was essential and required before employees could begin and/or resume working on the clock. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 9. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 et seq.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer 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, 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.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above, including forcing employees to wait in long lines before clocking in. During this time spent waiting, employees were paid zero wages. 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 9-2001 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, Employer failed to maintain a compliant meal period policy and practice. Employer failed 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 4 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.

Claimant's regular shift was as follows:

Shift start time:	6:30 am
First rest break:	9:45 am
Meal break	12 pm
Second rest break:	2 pm
Shift end time:	3 pm

Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work. Here, this means the meal break must start no later than 11:30 am. All warehouse employees were on this same break schedule, meaning that meal breaks were late every day, for every employee.

Employees were required to wait in line to clock back in at the end of their meal period. In order to be clocked back in on-time, employees had to join the line early, resulting in time spent under the employer's control doing a required task while unpaid and off the clock.

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 Inglewood, California, where temperatures soar year-round, especially in the summer. The warehouse did not have any air conditioning or dehumidifiers. The only climate control solutions provided to employees were industrial fans. Claimant and his coworkers worked in unbearable heat and humidity in the warehouse, and complaints to supervisors went unanswered.

Wage Order 9 ¶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.))

Employer 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 often received his rest periods late as a result of the press of work, approximately two times per week. When breaks were provided, they were not compliant because all employees went on break at the same time and the break room only had two tables, each with six chairs. This room accommodates no more than 25 % of the employees on break. As mentioned above, the warehouse did not have any air conditioning or dehumidifier, and employees worked in intolerable heat and humidity. Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. If breaks don't comply, Employer has violated California's rest break requirements.

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.*)

Employer knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Because of Employer'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.

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 he may pursue these claims as a representative action in civil court.

Sincerely,

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

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

cc: Sahag Majarian, Esq.