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Attorneys for Plaintiff,
JAMES WESLEY III on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JAMES WESLEY III, an individual, on behalf) Case No.: **20STCV48397**
of himself, all aggrieved employees, and the)
State of California as a Private Attorneys)
General,)

Plaintiffs,

REPRESENTATIVE ACTION

vs.

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

AIRTOUCH CELLULAR, INC., a California)
corporation, and DOES 1-50, inclusive,)

Defendants.)

Plaintiff JAMES WESLEY III 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 JAMES WESLEY III worked as an employee for defendant AIRTOUCH
3 CELLULAR, INC. and Does 1-50 (collectively “Defendant”). Defendant’s operations are based
4 upon cellular services. Plaintiff brings this action pursuant to the Private Attorneys General Act of
5 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former
6 employees of Defendant within one year of serving notice on the LWDA to the present are
7 aggrieved employees.

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

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
18 worked, including overtime hours worked; (2) failing to reimburse for required business expenses;
19 (3) failing to provide rest breaks; (4) failing to provide compliant off-duty meal breaks; (5) failing
20 to timely pay all wages owed; and, (6) failing to provide accurate wage statements and maintain
21 accurate payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor
22 Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as
23 described more fully herein.

THE PARTIES

24
25 7. Plaintiff JAMES WESLEY III is a resident of the State of California and was employed
26 as an hourly, nonexempt employee of Defendants for approximately 5 years until January 2020.
27
28

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

5 15. This representative action represents over one hundred current and former aggrieved
6 employees.

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

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

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

15 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

16 (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

17 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 20. Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an
20 employee is subject to the control of an employer, and including all the time the employee is
21 suffered or permitted to work, whether or not required to do so.” Plaintiff and aggrieved employees
22 were not paid for all hours worked, including overtime hours worked because of Defendants’
23 policy of requiring that employees communicate with customers off the clock, on their own time
24 and on their own cell phones. Defendants also fails to factor in Sunday premium (shift-differential)
25 pay into the regular rate of pay for purposes of calculating overtime. Defendants have been
26 engaged in many unlawful employment practices which resulted in underpayment for hours
27 worked each pay period, including overtime hours worked, as more fully set forth below:
28

21. Failure to Include Shift Differential in Regular Rate of Pay for Calculating Overtime.

Labor Code §200(a) requires that “‘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.” Defendant failed to include Sunday premium pay into the regular rate of pay for purposes of calculating overtime.

22. The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. Labor Code §510. Shift differentials, or additional pay for working less preferred shifts, like the Sunday shift differential at issue here, must be added into the total compensation for the week, increasing the employee’s regular rate of pay. Overtime paid to Plaintiff on his wage statements evidence that shift differentials are excluded. Defendants have failed to properly calculate and pay overtime compensation, making no adjustment to overtime rates reflected in any of Plaintiff or aggrieved employees’ paystubs. Plaintiff 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, Defendants have 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.

22. Failure to Pay Minimum Wage. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendants’ practice of requiring employees to use their personal cell phones for work purposes to call clients while on and off the clock, and failure to pay the required accurate overtime rate, reducing their effective pay rate below minimum wage as further discussed below. Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

1 24. Labor Code §2802 requires employers to indemnify employees for necessary
2 expenditures or losses incurred by employees in direct consequence of discharge of duties. Plaintiff
3 and aggrieved employees were frequently required to use their personal cell phones for business
4 purposes, including calls with customers as discussed above. Defendant failed to reimburse
5 Plaintiff and employees for this use as required by the Labor Code. Accordingly, Defendant is
6 liable for civil penalties under PAGA §2699 *et seq.*

7 **Failure to Provide Rest Breaks**

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

9 25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 26. Defendants have failed to maintain a policy and practice that provides or permits its
12 employees with off-duty rest periods as required by California law. Plaintiff and aggrieved
13 employees regularly worked in excess of four hours, or a major fraction thereof, during work days
14 without being provided any rest break, despite the fact that employees are entitled to at least a ten
15 minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §§226.7,
16 512 and Wage Order 4.

17 27. Plaintiff and aggrieved employees did not receive the required 10-minute,
18 uninterrupted breaks because they were constantly required to be on the sales floor and available
19 for customers.

20 28. Defendant 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, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et*
26 *seq.*

27 ///

28 ///

1 **Failure to Provide Timely & Compliant Meal Breaks**

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

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

5 30. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
6 during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”
7 Wage Order 4 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30
8 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as
9 time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee for
10 longer hours than those fixed by the wage order or under conditions of labor prohibited by the
11 order.

12 31. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
13 period of more than five hours per day without providing the employee with a meal period of not
14 less than 30 minutes...”

15 32. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty,
16 meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of
17 Labor Code §§226.7 and 512. Plaintiff alleges that his and other aggrieved employees’ meal
18 periods were frequently interrupted. As a derivative claim, Plaintiff alleges that her pay statements
19 were inaccurate, failing to include required meal period penalties, thus failing the requirements of
20 Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties
21 pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

22 33. Plaintiff alleges on information and belief that that Defendants’ failure to pay aggrieved
23 employees the unpaid balance of these meal period wages upon the termination of their
24 employment, as alleged in this cause of action, was willful, and thus entitles aggrieved employees
25 to penalties under Labor Code §203. Specifically, Labor Code §203 provides that an employee's
26 wages shall continue as a penalty until paid or for a period of up to 30 days from the time they
27 were due, whichever period is shorter.
28

1 34. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
2 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the premium
3 pay of one (1) hour of pay at the employee's regular rate of compensation for each workday that
4 the meal period is not provided, Plaintiff will seek statutory penalties under Labor Code §226(a)(1)
5 because the failure to pay such premium wages rendered gross pay calculations inaccurate in
6 violation of Labor Code §226(e)(2)(B)(i).

7 **Failure to Timely Pay All Wages Owed**

8 (Cal. Labor Code §§201, 202, 203, 204(a), and 2698 *et seq.*)

9 35. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 36. Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."
13 Labor Code section 202 states, in pertinent part, "[i]f an employee not having a written contract
14 for a definite period quits his or her employment, his or her wages shall become due and payable
15 not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his
16 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
17 quitting."

18 37. Failure to Pay Wages Due Upon Termination. Defendants knowingly and willfully
19 failed to pay Plaintiff and aggrieved employees all compensation due and owing upon separation
20 of employment, including but not limited to, all earned regular and overtime wages. Defendants
21 willfully failed to pay employees who are no longer employed by it all compensation due upon
22 termination of employment as required by Cal. Lab. Code §§201 and 202. Plaintiff believes that
23 other employees who separated from the company, whether voluntary or involuntary, were also
24 denied payment of wages in a timely manner as required by §203. Plaintiff seeks civil penalties
25 pursuant to §558 (a)(3) for each violation of §203 and civil penalties under PAGA pursuant to
26 §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA).

27 38. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
28 recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the

1 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
2 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
3 § 2698 *et. seq.* Labor Code section 256, in pertinent part, provides that a civil penalty shall be
4 imposed in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203.

5 39. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
6 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
7 Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
8 unlawful employment policies and practices discussed herein.

9 40. Additionally, during multiple pay periods, Plaintiff and aggrieved employees were paid
10 wages on a date that was late, well outside the requirement of §204, including on Plaintiff's
11 10/25/19 wage statement, where he was paid an adjustment for the period of 9/29/19 – 10/5/19.

12 41. As a result of these practices, aggrieved employees were underpaid for hours worked,
13 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
14 owed twice per month. As a result of these violations, Defendants are liable for civil penalties
15 pursuant to Cal. Lab. Code §§558 and 2698 *et seq.*

16 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

17 (Cal. Labor Code §§ 226, 1174, 2698 *et seq.*)

18 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 43. California Labor Code §226(a) provides that “[e]very employer shall, semimonthly or
21 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
24 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee
25 is paid, (7) the name of the employee and his or her social security number..., (8) the name and
26 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
27 the pay period and the corresponding number of hours worked at each hourly rate by the
28 employee.”

1 44. 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 wages
5 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 kept
8 on file for not less than two years.”

9 45. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
10 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in
11 accordance with Labor Code §§226 and 1174. As a result of the unlawful employment practices
12 discussed herein, Defendants maintained and issued inaccurate wage statements, failing to include
13 required overtime hours worked and misrepresenting actual regular hours on the final wage
14 statement. Further, Defendants failed to include meal and rest period penalties, thus failing the
15 requirements of Labor Code §226(a). Such failures caused injury to Plaintiff and others, by, among
16 other things, impeding them from knowing the total hours worked and the amount of wages to
17 which they are and were entitled.

18 46. Additionally, Plaintiff’s final wage statement, dated 1/7/20, does not list total hours
19 worked. Other wage statements issued to Plaintiff also fail to list total hours worked. For example,
20 Plaintiff’s 10/18/19 wage statement does not list the total hours worked, and if all the hours listed
21 on the wage statement were added up, they would not amount to the total hours actually worked
22 by Plaintiff during that pay period.

23 47. Labor Code §226.3 provides, “[a]ny employer who violates subdivision (a) of Section
24 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
26 each violation in a subsequent citation, for which the employer fails to provide the employee a
27 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
28 The civil penalties provided for in this section are in addition to any other penalty provided by

1 law.” Plaintiff seeks penalties as permitted under Labor Code §226 for himself and other aggrieved
2 employees for each violation.

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

7 49. Plaintiff seeks to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
9 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

10 **FIRST CAUSE OF ACTION**

11 **Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)**

12 **(California Labor Code §2698 *et seq.*)**

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

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

20 52. Plaintiff seeks to recover the PAGA civil penalties through a representative action
21 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
22 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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

- 25 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
26 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
27 b. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198,
28 2802, 2699 *et seq.*)

- c. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 *et seq.*);
- d. Failure to Provide Rest Breaks (Cal. Labor Code §§226(a), 226.7, 512, 1198, 2698 *et seq.*, Wage Order 9 ¶15.);
- e. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202, 203, 204(a), 2698 *et seq.*);
- f. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Labor Code §§226(a), 226.3 1174, 1174.5, 2698 *et seq.*).

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

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

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

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

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

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

60. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her 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: December 18, 2020

KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II

~~Page 2~~

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff JAMES WESLEY III, and
all aggrieved employees

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EXHIBIT 1



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SUITE 1710

LOS ANGELES, CA 90010

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October 14, 2020

Via E-filing:

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

Via Certified U.S. Mail:

AirTouch Cellular Inc.
15505 Sand Canyon Avenue
Irvine, CA 92618

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: James Wesley III
Employer: AirTouch Cellular Inc.

Dear Sir or Madam:

James Wesley III (“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 former employer, AirTouch Cellular, Inc. (hereafter referred to as “Employer” or “AirTouch.”)

Claimant worked for AirTouch for approximately 5 years, until January of 2020, and is an aggrieved employee. 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 Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(K) of Wage Order 4 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.”

Claimant and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Employer’s policy of requiring that employees communicate with customers off the clock, on their own time and on their own cell phones. Employer also fails to factor in Sunday premium (shift-differential) pay into the regular rate of pay for purposes of calculating overtime. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Failure to Include Shift Differential 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.”

Employer fails to include Sunday premium pay into the regular rate of pay for purposes of calculating overtime.

The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. Labor Code §510. Shift differentials, or additional pay for working less preferred shifts, like the Sunday shift differential at issue here, must be added into the total compensation for the week, increasing the employee’s regular rate of pay. Overtime paid to Claimant on his wage statements 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 Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practice of requiring employees to use their personal cell phones for

work purposes to call clients while on and off the clock, and failure to pay the required accurate overtime rate, reducing their effective pay rate below minimum wage as further discussed below. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid near minimum wage, Employer's failure to pay for all hours worked 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 4-2001. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Claimant and aggrieved employees were frequently required to use their personal cell phones for business purposes, including calls with customers as discussed above. Employer failed to reimburse Claimant and employees for this use as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §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, failing to provide all 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.

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. Claimant describes his meal periods as being frequently interrupted, and has made this same observation regarding his fellow aggrieved employees. 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 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 4.

Claimant and aggrieved employees did not receive the required 10-minute, uninterrupted breaks because they were constantly required to be on the sales floor and available for customers.

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, 204(a) and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as 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.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as

required by §203. Claimant will seek restitution pursuant to §558 (a)(3) for himself and other aggrieved employees for each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). As a result of the practices described herein, Claimant and aggrieved employees were underpaid for hours worked, and this underpayment resulted in a failure to pay all wages owed twice per month resulting in liability under Labor Code §210 for violation of §204.

Additionally, during multiple pay periods, Claimant and aggrieved employees were paid wages on a date that was late, well outside the requirement of §204, including on Claimant's 10/25/19 wage statement, where he was paid an adjustment for the period of 9/29/19 – 10/5/19.

Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records

(Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226, 226.3, 1174, and 1174.5.

Claimant's final wage statement, dated 1/7/20, does not list total hours worked. Other wage statements issued to Claimant also fail to list total hours worked. For example, Claimant's 10/18/19 wage statement does not list the total hours worked, and if all the hours listed on the wage statement were added up, they would not amount to the total hours actually worked by Claimant during that pay period.

Further, and derivative of the claims alleged above, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime, meal and rest period penalty wages, accurate overtime wage rates, phone reimbursement, and total hour worked. Such failures caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated several 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 him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Sincerely,

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

Nazo Koulloukian, Esq.
Attorney for Claimant