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Attorneys for Plaintiff,
DEJA HENRY on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

DEJA HENRY, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

vs.

PACIFIC MEDICAL LABORATORY, INC.,
INTERNATIONAL MEDICAL
LABORATORY, INC., and DOES 1-50,
inclusive,

Defendants.

Case No.: 30-2020-01174058-CU-OE-CXC

Assigned for all purposes to:

Judge William Cluster

Dept: CX104

REPRESENTATIVE ACTION

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

Plaintiff DEJA HENRY brings this PAGA representative action complaint on behalf of
herself, 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 DEJA HENRY worked for defendants PACIFIC MEDICAL LABORATORY,
3 INC., INTERNATIONAL MEDICAL LABORATORY, INC., and Does 1-50 (collectively
4 “Defendants”). Defendants operate numerous clinical laboratory facilities throughout California.
5 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
6 Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of
7 Defendant within one year of serving notice on the LWDA to the present are 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 herself, all other similarly situated aggrieved employees, and the State of
11 California, based upon the claims articulated below. Plaintiff provided notice of her 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; (2) failing to timely pay all wages owed; (3) failing to provide rest breaks; (4) failing to
19 provide compliant off-duty meal breaks; and (5) failing to provide accurate wage statements and
20 maintain accurate payroll records. Defendants are therefore liable for civil penalties under the Cal.
21 Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as
22 described more fully herein.

THE PARTIES

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

26 8. Defendant PACIFIC MEDICAL LABORATORY, INC. is a corporation incorporated
27 in California and doing business in California with the capacity to sue and to be sued, and doing
28 business, in the county of Orange, State of California.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 15. 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 16. Defendant PACIFIC MEDICAL LABORATORY, INC., is a corporation operating
6 numerous clinical laboratory facilities throughout California. This representative action represents
7 over one hundred current and former aggrieved employees.

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

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

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

16 **Failure to Pay for All Hours Worked**

17 (Cal. Labor Code §§203 218, 510, 1194-1197.1, 1198, 1199 and 2699 *et seq.*)

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

20 21. Section 2(G) of Wage Order 2 defines “hours worked” as “the time during which an
21 employee is subject to the control of an employer, and including all the time the employee is
22 suffered or permitted to work, whether or not required to do so.” When employees like Plaintiff
23 and aggrieved employees earning wages at or near minimum wage do not receive payment for all
24 hours worked, including time shaved from their timecards due to employer rounding, the result is
25 that they are earning less than the statutory minimum wages for all hours worked.

26 ///

27 ///

28 ///

22. Plaintiff's wage statements show that her wages were not calculated correctly. A summary follows:

Date	Hours	Rate	Amount paid	Amount owed	Under/Overpaid
7/3/2020	72.67	\$15	\$1,090.00	\$1,090.05	Underpaid \$0.05
6/19/2020	76.98	\$15	\$1,154.75	\$1,154.70	Overpaid \$0.05
6/5/2020	79.83	\$15	\$1,197.50	\$1,197.30	Overpaid \$0.20
5/22/2020	40.27	\$15	\$604.00	\$604.05	Underpaid \$0.05

23. Here, although employees clock in and timecards are not rounded, the wages owed are calculated incorrectly. In each of the incidents, if Plaintiff or aggrieved employees simply multiplied the actual hours worked by the rate of pay, they would reach a number that is different than the total pay listed on their wage statement. Furthermore, underpayments are prohibited, and, in the case of minimum wage employees, result in violations of Labor Code §223. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

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

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

25. Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.”

26. Defendant failed to pay Plaintiff and other separated aggrieved employees all wages due in a timely manner upon termination. Defendants willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

27. Plaintiff 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

1 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
2 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
3 Development Agency (LWDA).

4 28. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
5 recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the
6 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
7 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
8 § 2698 *et. seq.*

9 29. Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed
10 in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203.

11 30. Defendants were required to pay Plaintiff and aggrieved employees all wages earned
12 twice during each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all
13 wages earned to employees as a result of the unlawful employment policies and practices discussed
14 herein. As a result of these practices, aggrieved employees were underpaid for hours worked,
15 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
16 owed twice per month. As a result of these violations, Defendants are liable for civil penalties
17 pursuant to Cal. Lab. Code §§558 and 2698 *et seq.*

18 **Failure to Provide Rest Breaks**

19 (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*)

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

22 32. Defendants have failed to maintain a policy and practice that provides or permits its
23 employees with off-duty rest periods as required by California law. Plaintiff and aggrieved
24 employees regularly worked in excess of four hours, or a major fraction thereof, during work days
25 without being provided any rest break, despite the fact that employees are entitled to at least a ten
26 minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §§226.7,
27 512 and Wage Order 5.
28

1 33. Defendant required Plaintiff and employees to clock in and out for rest breaks, so there
2 are records of violations. Plaintiff did not receive a required break on 6/10/20, 6/12/20, 6/17/20,
3 6/18/20, and 6/25/20. When Plaintiff did receive a break, she was subject to unlawful restrictions.

4 34. Defendant's rest break policy is facially noncompliant as it prohibits employees from
5 leaving the premises. A screenshot from the employee handbook is below:

6 **Rest Breaks**

7 All non-exempt employees will be scheduled by their supervisor for a 10-minute paid rest period for each
8 4-hour segment, or major fraction thereof, which is worked during each eight-hour shift. These rest
9 periods will occur as near as possible to the middle of each 4-hour work segment. Employees whose total
10 daily work time is less than 3 ½ hours are not entitled to a rest period. Employees are expected to check
11 with their supervisor whenever they have questions about their rest period schedule. Rest breaks must be
12 taken during the working day and cannot be taken at the end of the day in order to leave early or in
13 conjunction with meal periods. Do not leave the premises during your rest period and not take more than
14 ten (10) minutes for each rest period.

15 35. For the dates when a break was missed, there is no accompanying premium
16 compensation on Plaintiff's paycheck. Defendant failed to pay Plaintiff and similarly situated
17 employees all premium compensation (one hour of pay at the employee's regular rate of pay for
18 missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods.
19 As a derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to include
20 required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of
21 these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698
22 *et. seq.*

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

24 (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*)

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

27 37. Labor Code §512 provides, "[a]n employer may not employ an employee for a work
28 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." Paragraph 11 of Wage Order 14 provides, in pertinent part, "[u]nless an
employee is relieved of all duty during a 30 minute meal period, the meal period shall be

1 considered an ‘on duty’ meal period and counted as time worked.” Pursuant to Labor Code §1198,
2 “the employment of any employee . . . under conditions of labor prohibited by the order is
3 unlawful.”

4 38. Plaintiff’s time records show that on 6/24/20 she was denied a meal break. On 6/17/20
5 her meal break was late. Plaintiff alleges that she and aggrieved employees frequently do not
6 receive meal breaks until substantially into the 6th hour or later. Pursuant to *Brinker Rest. Corp. v.*
7 *Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later
8 than the start of an employee's sixth hour of work.

9 39. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty,
10 meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of
11 Labor Code §§226.7 and 512. Although meals were routinely late and always noncompliant,
12 Defendants never paid penalty pay to Plaintiff and others. As a derivative claim, Plaintiff alleges
13 that her pay statements were inaccurate, failing to include required meal period penalties, thus
14 failing the requirements of Labor Code §226(a). As a result of these violations, Defendants are
15 liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

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

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

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

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

26 42. California Labor Code §226(a) provides that “[e]very employer shall, semimonthly or
27 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
28 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
2 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee
3 is paid, (7) the name of the employee and his or her social security number..., (8) the name and
4 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
5 the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee.” (Emphasis added.)

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

15 44. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in
17 accordance with Labor Code §§226 and 1174. In addition to miscalculating the total hours worked,
18 the statements provided to Plaintiff and aggrieved employees have not accurately reflected actual
19 gross wages earned, including meal/rest premiums. As a result of the unlawful employment
20 practices discussed herein, Defendants maintained and issued inaccurate wage statements,
21 misrepresenting actual regular hours on the final wage statement. Further, Defendants failed to
22 include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Such
23 failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing
24 the total hours worked and the amount of wages to which they are and were entitled.

25 45. Labor Code §226.3 provides, “[a]ny employer who violates subdivision (a) of Section
26 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
27 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
28 each violation in a subsequent citation, for which the employer fails to provide the employee a

1 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
2 The civil penalties provided for in this section are in addition to any other penalty provided by
3 law.” Plaintiff seeks penalties as permitted under Labor Code §226 for herself and other aggrieved
4 employees for each violation.

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

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

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

25 51. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
26 Code provisions:

- 27 a. Failure to Pay for All Hours Worked (Cal. Labor Code §§203 218, 510, 1194-
28 1197.1, 1198, 1199 and 2699 *et seq.*);

- b. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202, 2698 *et seq.*);
- c. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*);
- d. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*);
- e. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Labor Code §§226, 1174, 1174.5, 2698 *et seq.*).

52. 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).

53. 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.

54. 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.

55. 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 herself and all other current and former aggrieved employees.

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

57. 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.

58. 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 10, 2020

KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II

Page 2

BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff DEJA HENRY, 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

October 6, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Pacific Medical Laboratory, Inc.
15 Corporate Park
Irvine, CA 92606

International Medical Laboratory, Inc.
16253 Laguna Canyon Road #100
Irvine, CA 92618

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Deja Henry
Employer: Pacific Medical Laboratory, Inc. and International Medical
Laboratory, Inc.

Dear Sir or Madam:

Deja Henry (“Claimant”) has retained Nazo Koulloukian, Esq., of the KOUL LAW FIRM, and Sahag Majarian II, Esq., of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for wage and hour claims against her former employers, Pacific Medical Laboratory, Inc. and International Medical Laboratory, Inc. (“Employer”).

Employer is a California corporation operating numerous clinical laboratory facilities throughout California. Claimant alleges, on behalf of herself and aggrieved employees, that she was overworked- having been denied legally compliant meal and rest breaks. In addition to failure to provide compliant meal and rest breaks, Employer failed to properly

calculate wages and failed to issue and maintain accurate wage statements and payroll records. Ms. Henry worked for Employer until May of 2020.

Employer has violated, and/or have 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 Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. California employers must authorize or permit all hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 2-2001 12(A).

Here, Employer requires Claimant and employees to clock in and out for rest breaks, so there are records of violations. For example, Claimant did not receive a required break on 6/10/20, 6/12/20, 6/17/20, 6/18/20, and 6/25/20. When Claimant did receive a break, she was subject to unlawful restrictions. Employer’s rest break policy is facially noncompliant as it prohibits employees from leaving the premises. A screenshot from the employee handbook is below:

Rest Breaks

All non-exempt employees will be scheduled by their supervisor for a 10-minute paid rest period for each 4-hour segment, or major fraction thereof, which is worked during each eight-hour shift. These rest periods will occur as near as possible to the middle of each 4-hour work segment. Employees whose total daily work time is less than 3 ½ hours are not entitled to a rest period. Employees are expected to check with their supervisor whenever they have questions about their rest period schedule. Rest breaks must be taken during the working day and cannot be taken at the end of the day in order to leave early or in conjunction with meal periods. Do not leave the premises during your rest period and not take more than ten (10) minutes for each rest period.

In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement “obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time.” (citation omitted) Employees must be permitted to leave the facility, even if only for a 10-minute walk.

For the dates when a break was missed, there is no accompanying premium compensation on Claimant's paycheck. 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 missed rest periods. As a derivative claim, Claimant alleges that her pay statements were inaccurate, failing to include required rest 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 Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 et seq.

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all 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..." 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 Orders 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."

Claimant's time records show that on 6/24/20 she was denied a meal break. On 6/17/20 her meal break was late. Claimant alleges that she and aggrieved employees frequently do not receive meal breaks until substantially into the 6th hour or later. 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.

Employer failed to permit Claimant and aggrieved employees 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 and 512. 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 Pay For All Hours Worked

(Cal. Labor Code §§203 218, 510, 1194-1197.1, 1198, 1199 and 2699 *et seq.*)

Wage Order 2 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."

Labor Code § 223 prohibits the pay of less than a statutory or contractual wage scale. §1194-1197.1 prohibit the payment of less than the minimum wages. Labor Code §1197.1 states, “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wages less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.” Labor Code §1198 prohibits employers from employing workers under conditions that violate the wage orders.

Wage Order 2-2001 section 4(B) states “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wages for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Claimant’s wage statements show that her wages were not calculated correctly. A summary follows:

Date	Hours	Rate	Amount paid	Amount owed	Under/Overpaid
7/3/2020	72.67	\$15	\$1,090.00	\$1,090.05	Underpaid \$0.05
6/19/2020	76.98	\$15	\$1,154.75	\$1,154.70	Overpaid \$0.05
6/5/2020	79.83	\$15	\$1,197.50	\$1,197.30	Overpaid \$0.20
5/22/2020	40.27	\$15	\$604.00	\$604.05	Underpaid \$0.05

Here, although employees clock in and timecards are not rounded, the wages owed are calculated incorrectly. In each of the incidents, if Claimant or aggrieved employees simply multiplied the actual hours worked by the rate of pay, they would reach a number that is different than the total pay listed on their wage statement. Furthermore, underpayments are prohibited, and, in the case of minimum wage employees, result in violations of Labor Code §223. Employers are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

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

Failure to Pay Wages Due Upon Termination

Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.” Employers failed to pay Claimant and other separated aggrieved employees all wages due in a timely manner upon termination.

Moreover, as set forth above, Employer knowingly and willfully failed to pay all compensation due and owing at the time employment terminated. Employer willfully failed to pay 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 believe 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 herself 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 Employers 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). 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, Claimant 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 Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

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

As described above, the wage statements produced to Claimant and aggrieved employees did not provide accurate information. Multiplying the hours worked by the rate of pay yields a different number than the total pay listed on the wage statements.

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. In addition to miscalculating the total hours worked, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including meal/rest premiums.

Such failures caused injury to Claimant and others, by, among other things, impeding her from knowing the total amount of wages to which she is and were entitled. Employer

knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, penalty wages, 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. If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Claimant will file a complaint alleging PAGA violations, as described herein.

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:

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