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Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV381836
Reviewed By: M Vu

Attorneys for Plaintiff CARRIE LUND, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CARRIE LUND, on behalf of herself and all
others aggrieved employees,

Plaintiff,

v.

LKO TECHNOLOGIES INC., a Corporation
Doing Business in California; PRATEEK
GATTANI, an individual; and DOES 1- 50,
Inclusive,

Defendant,

Case No. 21CV381836

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL FINES**

1. Civil Penalties under the Private Attorneys
General Act (PAGA)

DEMAND FOR JURY TRIAL

Plaintiff, Carrie Lund, as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of Plaintiff and other current and former employees, complains and alleges as follows:

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2. Defendant and employer, LKO Technologies Inc., violated numerous wage and hour laws with respect to Plaintiff and other aggrieved employees by failing to provide, for example: accurate and itemized wages statements, payment for all hours worked (including regular wages and overtime), failure to provide a minimum wage lawful meal periods, lawful rest periods, timely payment during employment, failure to reimburse for expenses incurred during the course and scope of employment, and payment upon separation of employment.

The Plaintiff

The Defendant

5. Defendant Prateek Gattani is an individual who, at all relevant times, resided within the State of California and the County of Santa Clara. Plaintiff is informed and believes, and based thereon alleges, that Defendant Prateek Gattani was the actual employer and/or was a “person acting on behalf of the employer” within the meaning of California Labor Code § 558.1.

2

1 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
2 therefore liable to Plaintiff as alleged hereinafter.

3 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
4 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
5 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
6 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
7 least in part within the course and scope of said agency, employment, conspiracy, joint
8 employment, alter ego status, and/or joint venture and with the permission and consent of each of
9 the other Defendants.

10 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
11 and each of them, including those Defendants named DOES 1-50, acted in concert with one
12 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
13 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
14 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
15 each of them, including those Defendants named as DOES 1-50, formed and executed a
16 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
17 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
18 to and actually causing Plaintiff harm.

19 9. Whenever and wherever reference is made in this Complaint to any act or failure
20 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
21 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
22

23 **JURISDICTION AND VENUE**

24 10. Venue is proper in Santa Clara County, because Defendants maintain its locations
25 and transacts business in this county, the obligations and liability primarily arise in this county,
26 and work was primarily performed by Plaintiff and other aggrieved employees in this county.

27 11. The California Superior Court has jurisdiction over this matter. The individual
28 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for

1 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
2 amount required for diversity removal. Further, there is no federal question at issue as the issues
3 herein are based solely on California statutes and law, including, but not limited to, the California
4 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
5 and California Rules of Court.

6 **ALTER EGO, AGENCY, JOINT EMPLOYER, LABOR CODE § 558.1**

7 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such
8 a unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
9 separateness of Defendants have ceased to exist.

10 13. Plaintiff is informed and believes, and based thereon alleges that despite the
11 formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as
12 Defendants, including, but not limited to because:

13 a. Defendants are completely dominated and controlled by DOES 1-50, who
14 personally violated the laws as set forth in this complaint, and who have hidden and currently
15 hide behind Defendants to circumvent statutes or accomplish some other wrongful or inequitable
16 purpose.

17 b. DOES 1-50 derive actual and significant monetary benefits by and through
18 Defendants' unlawful conduct, and by using Defendants as the funding source for their own
19 personal expenditures.

20 c. Plaintiff is informed and believes that Defendants and DOES 1-50, while really
21 one and the same, were segregated to appear as though separate and distinct for purposes of
22 circumventing a statute or accomplishing some other wrongful or inequitable purpose.

23 d. Plaintiff is informed and believes that Defendants do not comply with all
24 requisite corporate formalities to maintain a legal and separate corporate existence.

25 e. Plaintiff is informed and believes, and based thereon alleges, that the business
26 affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed and
27 intermingled that the same cannot reasonably be segregated, and the same are in inextricable
28

confusion. Defendants are, and at all times relevant hereto was, used by DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and was, the alter ego of DOES 1-50. The recognition of the separate existence of Defendants would not promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code, Labor Code, and other statutory violations. The corporate existence of Defendants and DOES 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

14. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their separate corporate existence must be disregarded.

15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that Defendants and DOES 1-50 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in which Defendants' business was and is conducted.

16. Plaintiff is informed and believes that DOES 1-50 were the actual employers and/or “person[s] acting on behalf of the employer” within the meaning of Labor Code section 558.1.

GENERAL ALLEGATIONS

17. Defendant employed Plaintiff as a production associate from September 25, 2019 to February 18, 2020.

18. Plaintiff and Aggrieved Employees were non-exempt employees. Plaintiff and Aggrieved Employee's job duties did not involve independent judgment or discretion. Job duties consisted primarily of quality control and overseeing quantities and materials used to create products.

19. On many occasions, Plaintiff and aggrieved employees would work more than 8 hours per day or 40 hours per week without overtime pay.

1 20. Employer regularly did not have enough employees to provide sufficient
2 coverage to maintain their business operations so Plaintiff and similarly aggrieved employees
3 could not take complete, timely and uninterrupted meal and rest breaks.

4 21. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
5 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
6 departments, divisions, commissions, boards, agencies or employees for violation of the code
7 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
8 behalf of himself or herself and other current or former employees pursuant to the procedures
9 specified in Labor Code section 2699.3.

10 22. For all provisions of the Labor Code except those for which a civil penalty is
11 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
12 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
13 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
14 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.
15

16 23. Defendant's conduct during the PAGA period with respect to Plaintiff and the
17 aggrieved employees violates numerous Labor Code sections as detailed herein.

18 24. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
19 hour violations under the California Labor Code and IWC Wage Orders.

20 25. At all relevant times herein, Defendant employed Plaintiff and other aggrieved
21 employees as non-exempt employees.

22 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
23 or should have known that Plaintiff and aggrieved employees were entitled to receive wages for
24 all hours worked, including the applicable minimum, regular, and overtime wages, and that they
25 were not receiving all wages earned for work that was required to be performed. In violation of
26 the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and aggrieved
27 employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and aggrieved
28 employees all earned minimum, regular, and/or overtime compensation.

1 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and aggrieved employees were entitled to receive all required
3 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
4 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
5 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
6 of not providing timely meal periods. Defendant failed to pay an additional hour of pay to
7 Plaintiff and aggrieved employees for late meal periods. As a result of Defendant's unlawful
8 policy and practice, Plaintiff and aggrieved employees did not receive all meal periods or
9 payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of
10 pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

11 28. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
12 or should have known that Plaintiff and aggrieved employees were entitled to receive all required
13 rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
14 regular rate of pay when they did not receive a timely, uninterrupted off-duty rest period. In
15 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
16 of not providing timely rest periods. Defendant failed to pay an additional hour of pay to Plaintiff
17 and aggrieved employees for each rest periods was not provided or was interrupted. As a result
18 of Defendant's unlawful policy and practice, Plaintiff and aggrieved employees did not receive
19 all required rest periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved
20 employees' regular rate of pay when they did not receive a timely, uninterrupted 10 minute off-
21 duty rest period.

22 29. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
23 or should have known that Plaintiff and certain aggrieved employees were entitled to timely
24 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
25 and certain aggrieved employees did not receive payment of all wages due, within permissible
26 time periods, upon separation of employment.

27 30. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
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1 or should have known that Plaintiff and aggrieved employees were entitled to receive itemized
2 wage statements that accurately showed their actual hours worked, total hours worked, number
3 of hours worked at each hourly rate, gross and net wages earned, and correct employer
4 information in accordance with California law. In violation of the Labor Code, Plaintiff and
5 aggrieved employees were not provided with accurate itemized wage statements that accurately
6 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
7 effect during the pay period with the corresponding number of hours worked, and the address of
8 the legal entity that is the employer, among other things.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
10 should have known that Defendant was required to maintain accurate records of the hours
11 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendant failed
12 to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its
13 unfair rounding practices, among other things.
14

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16 **FIRST CAUSE OF ACTION**

17 **(Civil Penalties Under the Private Attorneys General Act,**
18 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

19 32. By this complaint, Plaintiff brings this case as a representative action seeking
20 penalties for himself, the aggrieved employees, and the State of California in a representative
21 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
22 employee who was employed by Defendant and subject to at least one of the Labor Code
23 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
24 her notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
25 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

26 33. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
27 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
28 sections alleged to have been violated, and after receiving notice from the LWDA of its intention

1 not to investigate, or after 65 days have passed without notice from the LWDA.

2 34. Prior to filing this complaint, on November 19, 2020, Plaintiff gave written notice
3 of the specific provisions alleged to have been violated, including the facts and theories to
4 support the alleged violations, as required by Labor Code section 2699.3. The written notice was
5 given via certified mail to Defendants, and the LWDA by electronically filing the notice via the
6 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
7 LWDA-CM-813126-20. A true and correct copy of Plaintiff's notice to the LWDA and
8 Defendant(s), dated November 19, 2020, is attached hereto as Exhibit A.

9 35. The LWDA has not provided Plaintiff with any notice that it intends to investigate
10 the violations as alleged in Plaintiff's November 19, 2020 notice, and more than 65 calendar
11 days have elapsed since the postmark date on the notice.

12 36. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
13 of this code that provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency...for a violation of this code, may, as an alternative, be
15 recovered through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and other current or former employees pursuant to the procedures specified in Section
17 2699.3."

18 37. As an aggrieved employee, Plaintiff brings this civil action to recover civil
19 penalties for Defendant's Labor Code violations.
20

21 **FIRST VIOLATION**

22 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

23 38. Under California Labor Code §512(a), "An employer may not employ an
24 employee for a work period of more than five hours per day without providing the employee
25 with a meal period of not less than 30 minutes, except that if the total work period per day of the
26 employee is no more than six hours, the meal period may be waived by mutual consent of both
27 the employer and employee."

28 39. Defendant violated Labor Code § 512 by failing to provide Plaintiff, and other

1 qualifying employees who worked shifts of greater than five hours, meal periods within the first
2 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's
3 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
4 section 512.

5 **SECOND VIOLATION**

6 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

7 40. Under California Labor Code §226.7(b), "An employer shall not require an
8 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

10 41. Industrial Welfare Commission (IWC) provides, "Every employer shall authorize
11 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
12 of each work period. The authorized rest period time shall be based on the total hours worked
13 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

14 42. Defendant failed to authorize and permit Plaintiff and other employee to take rest
15 periods and mandated by the Wage Order.

16 43. Under §226.7(c), an employer who violates §226.7(b), "...shall pay the employee
17 one additional hour of pay at the employee's regular rate of compensation for each workday that
18 the meal or rest or recovery period is not provided."

19 44. Defendant failed to pay Plaintiff and other employees who were not provided rest
20 periods one hour of pay at their regular rate of pay.

21 **THIRD VIOLATION**

22 **(Failure to Provide Complete and Accurate Wage Statements,** 23 **in Violation of Labor Code Section 226)**

24 45. Under California Labor Code §226(a), an employer is legally obligated to provide
25 its employees, semi-monthly or at the time of payment of wages, "an accurate itemized statement
26 in writing..."

27 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
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1 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
2 Labor Code § 2699.

3 **FOURTH VIOLATION**

4 **(Failure to Pay Overtime Wages)**

5 47. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
6 employer is required to compensate employees for all overtime, which is calculated at one and
7 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
8 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
9 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
10 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
11 any workweek.

12 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
13 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
14 Labor Code § 2699.
15

16 **FIFTH VIOLATION**

17 **(Failure to Pay Minimum Wages)**

18 49. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
19 payment to an employee of less than the applicable minimum wage for all hours worked in a
20 payroll period is unlawful.
21

22 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
24 Labor Code § 2699.

25 **SIXTH VIOLATION**

26 **(Failure to Timely Pay Wages During Employment)**

27 51. Pursuant to California Labor Code § 204, for all labor performed between the 1st
28 and 15th days of any calendar month, an employer is required to pay its employees between the

1 16th and 26th day of the month during which the labor was performed. California Labor Code §
2 204 also provides that for all labor performed between the 16th and 26th days of any calendar
3 month, Defendants are required to pay their employees between the 1st and 15th day of the
4 following calendar month. In addition, California Labor Code § 204 provides that all wages
5 earned for labor in excess of the normal work period shall be paid no later than the payday of the
6 next regular payroll period.

7 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
8 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
9 Labor Code § 2699.

10 **SEVENTH VIOLATION**

11 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

12 53. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
13 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
14 201 mandates that if an employer discharges an employee, the employee's wages accrued and
15 unpaid at the time of discharge are due and payable immediately.

16 54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
17 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
18 Labor Code § 2699.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief:

- 21
- 22 1. For penalties in an amount according to proof;
 - 23 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
 - 24 3. For such other and further relief as this Court may deem just and proper.

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2 Dated: April 12, 2021
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Respectfully Submitted,

WORK LAWYERS, PC

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5 By:

Justin Lo, Esq.

6 Attorney for Plaintiff CARRIE LUND, on behalf
7 of herself and other current and former employees
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Exhibit A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Lab. Code, § 2699.3)

DATE November 19, 2020

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California Labor &
Workforce Development Agency
PAGAfilings@dir.ca.gov

Prateek Gattani
Agent for Services of Process
LKO Technologies Inc.
920 Hillview Court Suite 190
Milpitas CA 95035

LKO Technologies Inc.
Legal Dept.
920 Hillview Court Suite 190
Milpitas CA 95035

Prateek Gattani
642 Troon Court
Milpitas, CA 95035

SUBJECT CARRIE A. LUND V. LKO TECHNOLOGIES INC. – NOTICE OF LABOR
CODE VIOLATIONS UNDER CAL. LABOR CODE 2699.3

Dear PAGA Administrator:

Office: (855) 670267
E-Mail: info@WorkLawyers.com
22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505

This office represents Carrie A. Lund (“Complainant”) in connection with claims under the California Labor Code. Complainant is a former employee of LKO Technologies Inc. (“Employer”). Pursuant to Labor Code section 2699.3, subdivision (a), we are providing written notice that Employer is in violation of various provisions of the California Labor Code.

Complainant intends to file a complaint against Employer in California Superior Court pursuant to Labor Code section 2699 on behalf of themselves and all aggrieved employees within the one year prior to the filing of the complaint (“Aggrieved Employees”).

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If Employer intends to cure the alleged violations within the statutory time period set forth in Labor Code sections 2699 and 2699.3, subdivision (a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

The Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for the purpose of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35,65. As such, anyone who directly

or indirectly, or through an agent or any other person, engages, suffers or permits any person to work or exercises control over the wages, hours, working conditions or any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and asserts that Prateek Gattani must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered, and permitted Complainant to perform services from which they benefitted, and furthermore the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant, they are each liable for civil penalties for violation of the California Labor Code as to the Complainant and other aggrieved employees.

Managing Agents

Prateek Gattani (hereinafter “managing agents”) were and are officers, corporate agents, executives, directors, and/or owners of LKO Technologies Inc. Among other things, these managing agents operated and controlled LKO Technologies Inc., personally and specifically established and enforced the employee and other policies for LKO Technologies Inc., and otherwise, continue to cause the wage and hourly violations and other wrongs alleged. The managing agents are responsible for all wage and hourly violations and other wrongs perpetrated upon Complainant and other aggrieved employees.

On information and belief, managing agents have control over the disbursement, maintenance, and accounting for all unpaid wages due and owing to its employees, and thus caused and/or ratified the under paying of employer’s employees. Employer and managing agents caused and/or ratified the violations pursuant to Labor Code Sections 558, 558.1, and 1197.1, making them jointly and severally liable as individuals with the corporate entities.

Individual Liability Of Managing Agents Under Labor Code Section 558 and 558.1

California Labor Code section 558(a) provides “any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: 1) For any initial violation, fifty dollars (\$50.00) for each underpaid employer for each pay period for which the employer was underpaid in addition to an amount sufficient to recover underpaid wages 2)for each subsequent violation, one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient recover underpaid wages 3) wages recovered pursuant to this section shall be paid to the affected employee. Labor Code section 558(c) provides that the civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

For the reasons set forth, managing agents meet the criteria of managing agents under California law, and therefore may be held liable under California Labor Code Section 558.1, 203, 226, 226.7, 1194 and 2802.

The Employer

Employer and its agents own, operate, or otherwise manage a business known as LKO Technologies Inc. According to the California Secretary of State’s website, Employer is a business registered in California on May 14, 2015.

Employer may be contacted directly through its agent for service of process at:

Prateek Gattani
Agent for Services of Process
LKO Technologies Inc.
920 Hillview Court Suite 190
Milpitas CA 95035

The business and mailing address listed for Employer with the California Secretary of State is as follows:

LKO Technologies Inc.
Legal Dept.
920 Hillview Court Suite 190
Milpitas CA 95035

Complainant believes and hereon alleges that Employer employs, at a minimum, 50 or more aggrieved employees who are non-exempt employees at its California locations at any given time. Specifically, it is believed that at any given time Employer has approximately 50 or more persons employed and working as within California, with additional employees in other positions within California.

Factual Background

Employer employed Complainant as a production associate or other like positions in California. Complainant began working on or about September 2019 and her last day of employment was on February 18, 2020.

The position required Complainant to work more than 8 hours a day and/or 40 hours per week without lawful compensation. Complainant and aggrieved employees were compensated at approximately \$20.90 per hour.

Complainant and aggrieved employees were regularly not paid for minimum wages and overtime for compensable work time spent under the control of Employer that was not compensated.

Employer failed to authorize and permit all required rest periods for Complainant and aggrieved employees because, upon information and belief, employer maintained unlawful rest period policies/practices. Employer regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Complainant and aggrieved employees could not take complete, timely and uninterrupted meal and rest breaks. Employer failed to provide Complainant and aggrieved employees with an additional hour of premium pay at the regular rate of pay for each rest period violation, as required by Labor Code section 226.7.

Defendants failed to provide Complainant accurate itemized wage statements in writing.

Legal Violations

At all relevant times, Complainant and Aggrieved Employees were non-exempt employees working for Employer. At all relevant times, Complainant was an aggrieved employee as defined in Labor Code section 2699, subdivision (c). (Lab. Code, § 2699, subd. (c) [“any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed”].)

Complainants employment resulted in numerous violations of the California Labor Code, including the following:

- Employer failed to keep accurate and complete time records for Complainant and Aggrieved Employees. (Lab. Code, §§ 1174, 1198, 1199; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Every employer shall keep accurate information with respect to each employee including the following: . . . Time records showing when the employee begins and ends each work period.”].)
- Employer failed to pay Complainant and Aggrieved Employees for all hours worked. (Lab. Code, § 1197; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage].)
- Employer failed to pay Complainant and Aggrieved Employees at least minimum wage for all hours worked or overtime rates for overtime work. (Lab. Code, §§ 1194, 1197, 1197.1.)

- ☐ Employer failed to pay Complainant and Aggrieved Employees overtime equal to one and one-half times their regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)
- ☐ Employer failed to pay Complainant and Aggrieved Employees overtime equal to double their regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. (Lab. Code §§ 510, 1198 –1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)
- ☐ Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a) ; Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ☐ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ☐ Employer failed to maintain a company rest break policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ☐ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)

- ☐ Employer failed to properly record Complainant and Aggrieved Employees' meal periods as required by Labor Code section 1198 and applicable IWC Wage Orders.(Lab. Code, § 1198; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) ["Meal periods, split shift intervals and total daily hours worked shall also be recorded."].)
- ☐ Employer failed to pay Complainant and Aggrieved Employees all wages earned by Complainant and Aggrieved Employees on at least semimonthly paydays. (Labor Code, §§ 204, subd. (a), 207.)
- ☐ Employer took improper deductions from the pay of Complainant and Aggrieved Employees. (Lab. Code, § 221–224, 2802.)
- ☐ Employer refused to make and/or falsely denied the amount of payments due to Complainant and Aggrieved Employees. (Lab. Code, § 216; see also Lab. Code, §§ 1174, 1197, 1197.1, 1198, 1199, 2699.)
- ☐ Employer intentionally and willfully failed to provide proper and accurate wage statements to employees Complainant and Aggrieved Employees. (Lab. Code, § § 226, subd. (a), 226.3, 226.6.) The deficiencies include, among other things, the failure to correctly identify the total hours worked, the gross wages, and correct hourly rate earned by Complainant and Aggrieved Employees.
- ☐ Employer failed to provide proper notices regarding employee pay to Complainant and Aggrieved Employees. (Lab. Code, § 2810.5.)
- ☐ Employer failed to pay employees all earned and unpaid wages when they separated/separate from employment. (Lab. Code, §§ 201, 202, 203, 210.)

- Employer refused to reimburse Complainant and Aggrieved Employees for all expenses incurred during the course and scope of their employment(Lab. Code, §2802.)

Employer has violated the abovereferenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. Complainant and other Aggrieved Employees seek to recover those amounts.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency ("LWDA") setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699 and 2699.3, subdivision (a), prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the Labor Commissioner or LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of herself and all other California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within **sixty (60) days** of this notice to our office and to that of other charged parties.

If you have any questions, please contact me at the phone number or address below:

Justin Lo
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22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505
Tel: (855) 670-1267
Email: Justin@WorkLawyers.com

Thank you for your attention to this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,


JUSTIN LO