

LIDMAN LAW, APC

Scott M. Lidman (SBN 199433)
slidman@lidmanlaw.com
Elizabeth Nguyen (SBN 238571)
enguyen@lidmanlaw.com
Milan Moore (SBN 308095)
mmoore@lidmanlaw.com
Romina Tamiry (SBN 328420)
rtamiry@lidmanlaw.com
2155 Campus Drive, Suite 150
El Segundo, California 90245
Tel: (424) 322-4772
Fax: (424) 322-4775

Attorneys for Plaintiff
MAGDALENA CRUZ

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
MAGDALENA CRUZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MAGDALENA CRUZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

SPS TECHNOLOGIES, LLC dba AIR
INDUSTRIES COMPANY, a Pennsylvania
limited liability company; PRECISION
CASTPARTS CORP.; an Oregon corporation;
AIR INDUSTRIES CORPORATION, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2021-01202173-CU-OE-CJC

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

Assigned for All Purposes
Judge Robert J. Moss

1 Plaintiff Magdalena Cruz (“Plaintiff”), on behalf of herself and all aggrieved employees, hereby
2 brings this Representative Action Complaint (“Complaint”) against SPS TECHNOLOGIES, LLC dba
3 AIR INDUSTRIES COMPANY, a Pennsylvania limited liability company; PRECISION
4 CASTPARTS CORP.; an Oregon corporation; AIR INDUSTRIES CORPORATION, a California
5 corporation; and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief
6 alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of herself and all aggrieved employees, hereby brings this
9 representative action for recovery of unpaid wages and penalties under California Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2698 *et seq.* This Court has jurisdiction
11 over Defendants’ violations of the California Labor Code because the amount in controversy exceeds
12 this Court's jurisdictional minimum.

13 **VENUE**

14 2. Venue as to each Defendant is proper in this judicial district pursuant to Cal. Code of
15 Civ. Proc. §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in the County of Orange. Defendants own, maintain offices, transact business, have agent(s)
17 within the County of Orange, and/or otherwise are found within the County of Orange, and Defendants
18 are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was and currently is, a California resident. During the one year immediately preceding
22 Plaintiff giving the required notice under the PAGA, and within the statute of limitations periods
23 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
24 employee.

25 4. Plaintiff is informed and believes, and based thereon alleges, that during the one-year
26 plus 178 days¹ preceding Plaintiff giving the required notice under the PAGA, and continuing to the

27
28 ¹ Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended
for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, for purposes of this Complaint, “aggrieved

1 present, Defendants did (and continue to do) business by manufacturing high-strength precision
2 fasteners used by leading airframe, engine, spacecraft, and missile manufacturers. Defendants
3 employed Plaintiff and other, non-exempt employees within, among other counties, Orange County
4 and the state of California and, therefore, were (and are) doing business in Orange County and the State
5 of California.

6 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
7 corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
9 this Representative Action Complaint when such true names and capacities are discovered. Plaintiff is
10 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
11 individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged
12 herein, and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
13 employment practices, wrongs, injuries and damages complained of herein.

14 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
15 herein, Defendants were and are the employers of Plaintiff and all other aggrieved employees.

16 7. At all times herein mentioned, each of said Defendants participated in the doing of the
17 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
18 and each of them, were the agents, servants, and employees of each and every one of the other
19 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
20 within the course and scope of said agency and employment. Defendants, and each of them, approved
21 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
22 herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of and
24 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
25 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
26

27
28 _____
employees” refers to all of Defendants’ non-exempt employees in California who worked for Defendants at any time in the
one-year plus 178 days preceding the submission of Plaintiff’s PAGA notice to the California Labor and Workforce
Development Agency (“LWDA”) through the present.

1 that all Defendants were joint employers for all purposes of Plaintiff and all other aggrieved employees.

2 **GENERAL FACTUAL ALLEGATIONS**

3 9. Plaintiff, a former employee, was employed by Defendants from approximately 1997
4 through approximately July 31, 2020. Throughout her employment with Defendants, Plaintiff worked
5 out of Defendants' facility in Garden Grove, California as an Operator.

6 10. During her employment with Defendants, Plaintiff was generally scheduled to work
7 from approximately 2:30 p.m. to approximately 1:00 a.m., Monday through Friday and/or Saturday.
8 Throughout her employment with Defendants, Defendants' timekeeping policies and practices required
9 Plaintiff to clock in and begin working approximately five (5) minutes before her scheduled start time
10 and continue working approximately five (5) minutes after the end of her scheduled end time for which
11 she did not receive pay. Thus, Plaintiff was often required to perform duties off-the-clock both before
12 and after her shift for which she was not paid. As a result, Defendants failed to pay Plaintiff all required
13 minimum wages. Further, because Plaintiff would often work more than eight (8) hours per day and/or
14 forty (40) hours per week, the pay practices utilized by Defendants also deprived Plaintiff of all
15 required overtime wages owed.

16 11. At times during Plaintiff's employment with Defendants, Plaintiff was not provided all
17 legally required meal periods due to Defendants' meal period policies and practices. Specifically,
18 during times when Plaintiff worked in excess of 10.0 hours per shift, Defendants failed to provide
19 Plaintiff with a second, timely meal period of at least thirty (30) minutes in length. Additionally, at
20 times when Plaintiff was not provided with all legally-compliant meal periods to which she was
21 entitled, Defendants failed to properly compensate Plaintiff with all the required meal period premiums
22 for each workday in which she experienced a meal period violation as mandated by Labor Code §
23 226.7. Specifically, on the occasions when Plaintiff received a meal period premium, it was paid at
24 Plaintiff's base rate of pay instead of her higher, regular rate of compensation in violation of Labor
25 Code section 226.7.

26 12. Plaintiff was also not authorized and permitted to take all legally required paid rest
27 periods due to Defendants' unlawful rest period policies and practices. Specifically, Defendants
28 maintained unlawful rest period policies and practices and failed to authorize and permit Plaintiff and

1 other non-exempt employees take a third rest period when they worked shifts in excess of 10.0 hours.
2 Accordingly, Defendants' rest period policies and practices fail to authorize and permit duty-free rest
3 periods for every four hours worked, *or major fraction thereof*.

4 13. Although Plaintiff was not authorized and permitted to take all legally-compliant rest
5 periods to which she was entitled, Defendants failed to compensate Plaintiff with the required rest
6 period premium for each workday in which she experienced a rest period violation as mandated by
7 Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period,
8 Defendants maintained no payroll code or other mechanism for paying rest period premiums when
9 Defendants failed to provide a legally compliant rest period.

10 14. During her employment with Defendants, Plaintiff would at times work in excess of
11 eight (8) hours per workday and/or more than forty (40) hours per workweek, but did not receive
12 overtime compensation equal to one and one-half times her regular rate of pay for working overtime
13 hours. Specifically, for at least a portion of the time period relevant to her claims, Plaintiff received
14 non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating
15 an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as
16 "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Plaintiff, Defendants failed to
17 include all forms of Incentive Pay when calculating Plaintiff's regular rate of pay, thereby causing
18 Plaintiff to be underpaid all of her required overtime wages.

19 15. In addition, throughout Plaintiff's employment, Plaintiff worked shifts with varying pay
20 rates. Thus, on the occasion when Plaintiff worked in excess of eight (8) hours per workday and/or
21 more than forty (40) hours per workweek, Plaintiff received various overtime rates of pay for her
22 overtime hours worked, depending on her shift. However, Defendants failed to use Plaintiff's weighted
23 average of overtime pay (instead paying overtime at the rate of 1.5 times the hourly rate in effect at the
24 time the overtime was worked), reflecting Plaintiff's varying pay rates, when calculating Plaintiff's
25 regular rate of pay for a workweek, thereby causing Plaintiff to be underpaid for her overtime hours
26 worked. *See Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 569 (2018) ("[n]ot all
27 employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a
28 *weighted average* reflecting work done at varying times, under varying circumstances, and at varying

rates.”) (emphasis in original); *see also* Lab. Code, § 246, subd. (l)(1) (referring to “the regular rate of pay for the workweek”); *see also* DLSE Manual, *supra*, § 49.2.5, p. 49-10 (setting forth the DLSE’s “Weighted Average Method” for calculating regular rate of pay when worker has varying pay rates); *see also* 29 C.F.R. § 778.115 (2008) (setting forth the federal “weighted average” policy).

16. As a result of Defendants’ failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

17. As a further result of Defendants’ failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants failed to pay all wages owed to Plaintiff upon her separation of employment from Defendants.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004

(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though fully set forth herein.

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations

of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Plaintiff and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Plaintiff and other aggrieved employees;
- e. Defendants violated Labor Code § 226 by failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 204 by failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month;
- g. Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees; and
- h. Defendants violated Labor Code § 203 by failing to pay Plaintiff and other aggrieved employees for all wages owed at the time of their separation of employment.

20. On March 16, 2021, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(h). Attached hereto as **Exhibit A** is a true and correct copy of the March 16, 2021 correspondence. Now that at least sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private

Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which she is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations cited in Paragraph 19 (a)-(h) above.

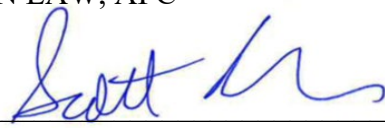
2. Upon the First Cause of Action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

3. For such other and further relief the Court may deem just and proper.

Dated: May 21, 2021

Respectfully submitted,
LIDMAN LAW, APC

By:



Scott M. Lidman
Elizabeth Nguyen
Attorneys for Plaintiff
MAGDALENA CRUZ

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

March 16, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Air Industries Corporation, a California
corporation
12570 Knott Street
Garden Grove, CA 92841

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Precision Castparts Corp., an Oregon
corporation
4650 S. Macadam Avenue, Suite 300
Portland, OR 97239

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

SPS Technologies, LLC, a Pennsylvania limited
liability company
4650 S. Macadam Avenue, Suite 300
Portland, OR 97239

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Precision Castparts Corp., an Oregon
corporation
c/o National Registered Agents, Inc., Agent for
Service of Process
818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

SPS Technologies, LLC, a Pennsylvania limited
liability company
c/o National Registered Agents, Inc., Agent for
Service of Process
818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Air Industries Corporation, a California
corporation
c/o Dan Higgins, Agent for Service of Process
1431 21st Street
Manhattan Beach, CA 90266

Re: *Magdalena Cruz v. SPS Technologies, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Magdalena Cruz in claims arising from her employment with SPS Technologies, LLC, a Pennsylvania limited liability company; Precision Castparts Corp., an Oregon corporation; and Air Industries Corporation, a California corporation (“Defendants”). Ms. Cruz is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of

the Labor Code allegedly violated. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, for purposes of this letter, an “aggrieved employee” should be considered to include all current and former non-exempt employees working for Defendants in California, during the one year plus 178 days immediately preceding the date of this letter through the present date, and continuing through a civil judgment if the LWDA takes no action and Ms. Cruz files a civil lawsuit seeking civil penalties.

Ms. Cruz, a former employee, was employed by Defendants from approximately 1997 through approximately July 31, 2020. Throughout her employment with Defendants, Ms. Cruz worked out of Defendants’ facility in Garden Grove, California as an Operator.

During her employment with Defendants, Ms. Cruz was generally scheduled to work from approximately 2:30 p.m. to approximately 1:00 a.m., Monday through Friday and/or Saturday. Throughout her employment with Defendants, Defendants’ timekeeping policies and practices required Ms. Cruz to clock in and begin working approximately five (5) minutes before her scheduled start time and continue working approximately five (5) minutes after the end of her scheduled end time for which she did not receive pay. Thus, Ms. Cruz was often required to perform duties off-the-clock both before and after her shift for which she was not paid. As a result, Defendants failed to pay Ms. Cruz all required minimum wages. Further, because Ms. Cruz would often work more than eight (8) hours per day and/or forty (40) hours per week, the pay practices utilized by Defendants also deprived Ms. Cruz of all required overtime wages owed.

At times during Ms. Cruz’s employment with Defendants, Ms. Cruz was not provided all legally required meal periods due to Defendants’ meal period policies and practices. Specifically, during times when Ms. Cruz worked in excess of 10.0 hours per shift, Defendants failed to provide Ms. Cruz with a second, timely meal period of at least thirty (30) minutes in length. Additionally, at times when Ms. Cruz was not provided with all legally-compliant meal periods to which she was entitled, Defendants failed to properly compensate Ms. Cruz with all the required meal period premiums for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Specifically, on the occasions when Ms. Cruz received a meal period premium, it was paid at Ms. Cruz’s base rate of pay instead of her higher, regular rate of compensation in violation of Labor Code section 226.7.

Ms. Cruz was also not authorized and permitted to take all legally required paid rest periods due to Defendants’ unlawful rest period policies and practices. Specifically, Defendants maintained unlawful rest period policies and practices and failed to authorize and permit Ms. Cruz and other non-exempt employees take a third rest period when they worked shifts in excess of 10.0 hours. Accordingly, Defendants’ rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, or major fraction thereof.

Although Ms. Cruz was not authorized and permitted to take all legally-compliant rest periods to which she was entitled, Defendants failed to compensate Ms. Cruz with the required rest period premium for each workday in which she experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to provide a legally compliant rest period.

During her employment with Defendants, Ms. Cruz would at times work in excess of eight (8) hours per workday and/or more than forty (40) hours per workweek, but did not receive overtime compensation equal to one and one-half times her regular rate of pay for working overtime hours. Specifically, for at least a portion of the time period relevant to her claims, Ms. Cruz received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendants' payment of Incentive Pay to Ms. Cruz, Defendants failed to include all forms of Incentive Pay when calculating Ms. Cruz's regular rate of pay, thereby causing Ms. Cruz to be underpaid all of her required overtime wages.

In addition, throughout Ms. Cruz's employment, Ms. Cruz worked shifts with varying pay rates. Thus, on the occasion when Ms. Cruz worked in excess of eight (8) hours per workday and/or more than forty (40) hours per workweek, Ms. Cruz received various overtime rates of pay for her overtime hours worked, depending on her shift. However, Defendants failed to use Ms. Cruz's weighted average of overtime pay (instead paying overtime at the rate of 1.5 times the hourly rate in effect at the time the overtime was worked), reflecting Ms. Cruz's varying pay rates, when calculating Ms. Cruz's regular rate of pay for a workweek, thereby causing Ms. Cruz to be underpaid for her overtime hours worked. See *Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 569 (2018) ("[n]ot all employees earn at a fixed pay rate throughout a pay period, and therefore regular rate of pay is a weighted average reflecting work done at varying times, under varying circumstances, and at varying rates.") (emphasis in original); see also Lab. Code, § 246, subd. (1)(1) (referring to "the regular rate of pay for the workweek"); see also DLSE Manual, supra, § 49.2.5, p. 49-10 (setting forth the DLSE's "Weighted Average Method" for calculating regular rate of pay when worker has varying pay rates); see also 29 C.F.R. § 778.115 (2008) (setting forth the federal "weighted average" policy).

As a result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Cruz.

As a further result of Defendants' failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, Defendants failed to pay all wages owed to Ms. Cruz upon her separation of employment from Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Minimum Wage Violations

Defendants were required to pay Ms. Cruz and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1194; 1194.2, 1197, 1197.1; The Wage Order 1, § 4. Ms. Cruz and other aggrieved employees were not paid for all hours worked due to Defendants' timekeeping policies and practices. As alleged above, throughout Ms. Cruz's employment with Defendants, Defendants' timekeeping policies and practices required her to clock in and begin working approximately five (5) minutes before her scheduled start time and continue working approximately five (5) minutes after the end of her scheduled end time for which she did not receive pay. Thus, Ms. Cruz was often required to perform duties off-the-clock both before and after her shift for which she was not paid. As a result, Defendants failed to pay Ms. Cruz all required minimum wages. Further, because Ms. Cruz would often work more than eight (8) hours per day and/or forty (40) hours

per week, the pay practices utilized by Defendants also deprived Ms. Cruz of all required overtime wages owed.

Overtime Violations

Defendants were required to pay Ms. Cruz and other aggrieved employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked. As explained above, Ms. Cruz and other aggrieved employees were not paid for overtime wages owed due to Defendants’ timekeeping policies and practices. As alleged above, throughout Ms. Cruz’s employment with Defendants, Defendants’ timekeeping policies and practices required her to clock in and begin working approximately five (5) minutes before her scheduled start time and continue working approximately five (5) minutes after the end of her scheduled end time for which she did not receive pay. Thus, Ms. Cruz was often required to perform duties off-the-clock both before and after her shift for which she was not paid. Ms. Cruz would often work more than eight (8) hours per day and/or forty (40) hours per week; as a result, the timekeeping and pay practices utilized by Defendants deprived Ms. Cruz of all required overtime wages owed. In addition, as alleged above, Ms. Cruz would at times work in excess of eight (8) hours per workday and/or more than forty (40) hours per workweek during her employment with Defendants, but did not receive overtime compensation equal to one and one-half times her regular rate of pay for working overtime hours. Specifically, for at least a portion of the time period relevant to her claims, Ms. Cruz received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (hereinafter the aforementioned forms of pay are collectively referred to as “Incentive Pay”). Despite Defendants’ payment of Incentive Pay to Ms. Cruz, Defendants failed to include all forms of Incentive Pay when calculating Ms. Cruz’s regular rate of pay, thereby causing Ms. Cruz to be underpaid all of her required overtime wages.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Cruz and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Ms. Cruz was not provided all legally required meal periods due to Defendants’ meal period policies and practices. Specifically, during times when Ms. Cruz worked in excess of 10.0 hours per shift, Defendants failed to provide Ms. Cruz with a second, timely meal period of at least thirty (30) minutes in length. Additionally, at times when Ms. Cruz was not provided with all legally-compliant meal periods to which she was entitled, Defendants failed to properly compensate Ms. Cruz with all the required meal period premiums for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Specifically, on the occasions when Ms. Cruz received a meal period premium, it was paid at Ms. Cruz’s base rate of pay instead of her higher, regular rate of compensation, in violation of Labor Code section 226.7. As a result, Ms. Cruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an

employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Ms. Cruz was not provided with all legally-compliant meal periods to which she was entitled, Defendants failed to compensate Ms. Cruz and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendants also failed to authorize and permit Ms. Cruz and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Specifically, Defendants maintained unlawful rest period policies and practices and failed to authorize and permit Ms. Cruz and other non-exempt employees take a third rest period when they worked shifts in excess of 10.0 hours. Accordingly, Defendants' rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, or major fraction thereof. As such, Ms. Cruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Cruz and other aggrieved employees with accurate and complete, itemized wage statements that included, among other requirements, failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendants' failure to furnish Ms. Cruz and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all failure to pay all minimum and overtime wages, as well as meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Ms. Cruz and other similarly aggrieved employees all of their final wages at the time of separation, which included, among other things, all minimum and overtime wages, as well as meal and rest period premium wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Ms. Cruz and similarly aggrieved employees was willful and, consequently, entitles Ms. Cruz and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

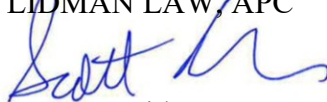
As an “aggrieved employee,” Ms. Cruz will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage

and hour violations alleged herein. Based on Ms. Cruz's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Cruz and other aggrieved employees the statutory minimum wage for all hours worked;
- b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Cruz and other aggrieved employees all overtime compensation earned;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Cruz and other aggrieved employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Cruz and other aggrieved employees;
- e) Defendants violated Labor Code § 226 by failing to furnish Ms. Cruz and other aggrieved employees with accurate and compliant itemized wage statements;
- f) Defendants violated Labor Code § 204 by failing to pay Ms. Cruz and other aggrieved employees all earned wages at least twice during each calendar month;
- g) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Cruz and other aggrieved employees; and
- h) Defendants violated Labor Code § 203 by failing to pay Ms. Cruz and other aggrieved employees for all wages owed at the time of their separation of employment.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman