

FILED  
Superior Court Of California,  
Sacramento  
10/12/2021  
reanmiguel  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2021-00307786**

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10 JUNIOR VALDEZ on behalf of  
himself, all aggrieved employees, and the State  
11 of California as a Private Attorneys General

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF SACRAMENTO**

14  
15 JUNIOR VALDEZ, an individual, on behalf of ) Case No.: 34-2021-00307786  
16 himself, all aggrieved employees, and the State )  
of California as a Private Attorneys General, )

17 Plaintiffs,

18 vs.

19 **FIRST AMENDED REPRESENTATIVE  
ACTION COMPLAINT**

20 AUS DECKING, INC., and DOES 1-50,  
21 inclusive,

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

23 Defendants.

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25  
26  
27  
28  
**BY FAX**

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JUNIOR VALDEZ, an individual, on behalf of ) Case No.: 34-2021-00307786  
himself, all aggrieved employees, and the State )  
of California as a Private Attorneys General, )

Plaintiffs,

vs.

AUS DECKING, INC., and DOES 1-50,  
inclusive,

Defendants.

**FIRST AMENDED REPRESENTATIVE  
ACTION COMPLAINT**

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

1 Plaintiff JUNIOR VALDEZ brings this PAGA representative action complaint on behalf  
2 of himself, all aggrieved employees, and the State of California as a Private Attorneys General,  
3 and alleges as follows:

#### 4 NATURE OF THE ACTION

5  
6 1. Plaintiff JUNIOR VALDEZ worked as a plumber for defendant AUS DECKING, INC.,  
7 and Does 1-50 (collectively “Defendants” or “Employer”). Plaintiff brings this action pursuant to  
8 the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §2698 *et seq.*, on a  
9 representative basis. All current and former hourly, non-exempt employees of Defendant in  
10 California within one year of serving notice on the LWDA to the present are aggrieved employees.

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

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

#### 26 THE PARTIES

27 7. Plaintiff JUNIOR VALDEZ is a resident of the State of California and was employed as  
28 an hourly, nonexempt employee of Defendants until April 8, 2021.

1 8. Defendant AUS DECKING, INC., is a corporation doing business in California with the  
2 capacity to sue and to be sued, and doing business in the county of Sacramento, State of California.

3 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of  
4 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is  
5 informed and believes and thereon alleges that said Defendants are legally responsible for the  
6 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,  
7 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

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

### 15 **JURISDICTION AND VENUE**

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

19 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of  
20 the Superior Court and will be established according to proof at trial. Based on information,  
21 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for  
22 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,  
23 000).

24 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a  
25 resident of California and Defendants are incorporated in and/or qualified to do business in  
26 California and regularly conduct business in California. Further, there is no federal question at  
27 issue as the claims herein are based solely on California law.  
28

1                                   **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

5           15. Defendant AUS DECKING, INC., is a contractor that specializes in Gyp-Crete, sound-  
6 mat, concrete, waterproofing, and deck coating services throughout northern California.  
7 ([www.ausdecking.com](http://www.ausdecking.com)). This representative action represents dozens of current and former  
8 aggrieved employees.

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

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

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

17                                   **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**  
18 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, and Wage  
19 Order 16)

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

22           20. Section 2(J) of Wage Order 16 defines “hours worked” as “the time during which an  
23 employee is subject to the control of an employer and including all the time the employee is  
24 suffered or permitted to work, whether or not required to do so.” Plaintiff and aggrieved employees  
25 were not paid for all hours worked, including overtime hours worked because of Defendants’  
26 policy of not paying for all travel time spent to and from worksites which were up to two hours  
27 away.  
28

1           21. This resulted in many unpaid hours worked for all aggrieved employees required to  
2 communicate regarding work matters with their employer while off the clock. Defendants violated  
3 Labor Code §§510 1194, and 1198, and Wage Order 16. Defendants are liable for civil penalties  
4 pursuant to Labor Code §§558 and 2698 et seq.

5           22. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked  
6 10-12 hours per shift, and from time to time more than 12 hours in a shift wherein they were under  
7 the Employer's control but not compensated for all of their time. Plaintiff and aggrieved employees  
8 were not paid for all time worked, resulting in failure to pay wages, including overtime and  
9 minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and  
10 Wage Order 16. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

11           23. Unpaid Overtime and Underpaid Travel Time. Plaintiff's average schedule was 10-12  
12 or more hours per shift. Plaintiff and aggrieved employees frequently worked for 12 or more hours  
13 per day and often would not receive double time after the 12<sup>th</sup> hour as required by Labor Code  
14 §510 and the Wage Order. Plaintiff and aggrieved employees were consistently not paid for the  
15 time spent driving from their last location of the day back to the company facility, and for the time  
16 spent unloading at the end of the day. In fact, although employees carpooled in company vehicles  
17 to and from worksites, some as far as two hours away, only the driver was paid an hourly rate for  
18 time spent driving from the job site back to the company location. Passengers in the car were paid  
19 zero wages for required transportation time. Some Employees were not paid for the time spent  
20 driving from the company facility to the work site.

21           24. Employer has a clear policy and practice of failing to pay for all hours worked at the  
22 employees' regular rate of pay for required tasks. Employer did not use any form of electronic  
23 timekeeping system. It is Employer's policy to handwrite the Employee's hours and the hours are  
24 not accurately logged, failing to accurately depict all hours worked. This policy is an admission of  
25 unlawful conduct and a patent violation of California laws requiring that employers pay for all  
26 hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

27           25. Failure to Pay All Wages Owed Twice Per Month. Employer was required to pay  
28 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to

1 Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the  
2 unlawful employment policies and practices discussed herein. As a result of these practices,  
3 Employees were underpaid for hours worked, including overtime and penalty wages, and this  
4 underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure,  
5 Employer is liable under Labor Code §210 for failure to pay wages as required by law.

6  
7 **Failure to Provide Timely & Compliant Meal Breaks**

8 (Civil Penalties under Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*)

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

11 27. Labor Code §512 provides, “[a]n employer may not employ an employee for a work  
12 period of more than five hours per day without providing the employee with a meal period of not  
13 less than 30 minutes...An employer shall not employ an employee for a work period of more than  
14 10 hours per day without providing the employee with a second meal period of not less than 30  
minutes.”

15 28. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work  
16 during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”  
17 Wage Order 16 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a  
18 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted  
19 as time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee  
20 for longer hours than those fixed by the wage order or under conditions of labor prohibited by the  
order.

21 29. On many occasions, Plaintiff did not receive their first meal break within the first 5  
22 hours of their shift. In addition, Plaintiff never received their second meal period for shifts over  
23 10 hours. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty,  
24 first and second meal breaks of “not less than 30 minutes” for each five consecutive hours of work  
25 in violation of Labor Code §§226.7 and 512. Although meals were routinely late, interrupted or  
26 non-existent and always noncompliant, Defendants never paid penalty pay to Plaintiff and others.  
27 As a derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to include  
28

1 required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result  
2 of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558  
3 and 2698 *et. seq.*

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

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

15 **Failure to Provide Rest Breaks**

16 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

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

19 33. Defendants have failed to maintain a compliant rest period policy and practice that  
20 provides its employees with off-duty rest periods as required by California law. Plaintiff reports  
21 that he and his coworkers never received their third rest breaks on shifts of over 10 hours.  
22 Employees did not clock out for meal or rest periods, the time spent during the meal and rest  
23 periods were manually written in and deducted from wages. This practice was consistent with  
24 Employer manually logging all of Employees hours for shifts worked. Plaintiff was not provided  
25 with any third rest periods for shifts over 10 hours during the time of his employment.

26 34. Defendants did not authorize or permit all of its hourly employees to take at least a ten  
27 minute rest period in which they were relived of all duties, for every four hours of work, or major  
28 fraction thereof, as required by Cal. Lab. Code §§226.7, 512 and Wage Order 16-2001 11(A).

35. According to Plaintiff, he never received rest breaks, and this experience is consistent with that of other aggrieved employees. When breaks were missed, Defendants failed to pay the one-hour penalty, as required by Labor Code §226.7(b) for these missed rest periods. Moreover, although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work,” even in those instances, the missed rest period must be made up in that same day or the employer must compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay. Because Defendants violated the Wage Order, Defendants are liable under Labor Code §1198. As a derivative claim, Plaintiff also alleges that their 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, Defendants are liable for civil penalties pursuant to Cal. Lab. Code §§558 and 2698 *et seq.*

## Failure to Timely Pay All Wages Owed

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

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

37. 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.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

38. As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including meal/rest periods and overtime pay. 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

1 §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to  
2 Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the  
3 Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for  
4 civil penalties pursuant to Cal. Lab. Code § 2698 *et seq.*

5  
6 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

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

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

10 40. California Labor Code §226(a) provides that "[e]very employer shall, semimonthly or  
11 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized  
12 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of  
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,  
14 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee  
15 is paid, (7) the name of the employee and his or her social security number..., (8) the name and  
16 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during  
17 the pay period and the corresponding number of hours worked at each hourly rate by the  
18 employee."

19 41. Labor Code §1174 provides that "[e]very employer employing labor in this state shall  
20 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages  
21 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at  
22 which employees are employed, payroll records showing the hours worked daily by and the wages  
23 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,  
24 employees employed at the respective plants or establishments. These records shall be kept in  
25 accordance with rules established for this purpose by the commission, but in any case, shall be  
26 kept on file for not less than two years."

27 42. Defendants knowingly and intentionally failed to provide timely, accurate, itemized  
28 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in

1 accordance with Labor Code §§226 and 1174. The statements provided to Plaintiff and aggrieved  
2 employees have not consistently accurately reflected actual gross wages earned, including  
3 overtime and rest period pay, and total hours worked. Such failure caused injury to Plaintiff and  
4 others, by, among other things, impeding them from knowing the total hours worked and the  
5 amount of wages to which they are and were entitled. Defendants knowingly and intentionally  
6 failed to itemize the gross wages earned, net wages earned, and total hours worked. Defendants  
7 are liable for civil penalties pursuant to Labor Code §2699 *et seq.*

8  
9 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

- 24 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.  
25 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, and Wage  
26 Order 16;  
27 b. Failure to Provide Uninterrupted 1<sup>st</sup> and 2<sup>nd</sup> Meal Breaks (Cal. Labor Code  
28 §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*);

- 1 c. Failure to Provide Adequate Rest Breaks (Cal. Labor Code §§226(a), 226.7, 512,  
2 558, 1198, 2698 *et seq.*);
- 3 d. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 558 2698  
4 *et seq.*);
- 5 e. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate  
6 Records (Cal. Lab. Code §§226, 1174, 2699 *et seq.*); and

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

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

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

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

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

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

28

53. 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 his PAGA claims in this action on behalf of aggrieved employees and the State of California.

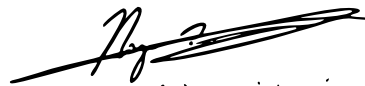
#### **PRAYER FOR RELIEF**

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

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

DATED: October 12, 2021

**KOUL LAW FIRM**



BY: Nazo Koulloukian, Esq.  
Attorneys for Plaintiff JUNIOR VALDEZ, and all  
aggrieved employees

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**EXHIBIT 1**



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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

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June 22, 2021

**Via E-filing:**

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

**Via Certified U.S. Mail:**

AUS Decking, Inc.  
2999 Promenade St. Ste. 100  
West Sacramento, Ca 95691

Re: PAGA Notice Pursuant to California Labor Code §2699  
Claimant: Junior Valdez  
Employer: AUS Decking, Inc.

Dear Sir or Madam:

Junior Valdez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for wage and hour claims against his employer, AUS Decking, Inc. (hereafter collectively referred to as “Employer.”)

Employer is a construction company that specializes in Gyp-Crete, sound-mat, concrete, waterproofing, and deck coating services throughout northern California.

([www.ausdecking.com](http://www.ausdecking.com)) Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as a crew head earning \$24/hour until April 8, 2021.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit Claimant to seek civil

penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

**Failure to Comply with California Law Concerning Payment for All Hours Worked, Including Overtime Hours Worked**

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

Section 2(J) of Wage Order 16 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.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

**Off-the-Clock Hours Worked**

Claimant and aggrieved employees frequently worked 10-12 hours per shift, and from time to time more than 12 hours in a shift wherein they were under the Employer’s control but not compensated for all of their time. Claimant and aggrieved employees were not paid for all time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 16. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

**Unpaid Overtime and Underpaid Travel Time**

Claimant’s average schedule was 10-12 or more hours per shift. Claimant and aggrieved employees frequently worked for 12 or more hours per day and often would not receive double time after the 12<sup>th</sup> hour as required by Labor Code §510 and the Wage Order. Claimant and aggrieved employees were consistently not paid for the time spent driving from their last location of the day back to the company facility, and for the time spent unloading at the end of the day. In fact, although employees carpooled in company vehicles to and from worksites, some as far as two hours away, only the driver was paid an hourly rate for time spent driving from the job site back to the company location. Passengers in the car were paid zero wages for required transportation time. Some Employees were not paid for the time spent driving from the company facility to the work site.

Employer has a clear policy and practice of failing to pay for all hours worked at the employees’ regular rate of pay for required tasks. Employer did not use any form of electronic timekeeping system. It is Employer’s policy to handwrite the Employee’s

hours and the hours are not accurately logged, failing to accurately depict all hours worked. This policy is an admission of unlawful conduct and a patent violation of California laws requiring that employers pay for all hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

#### **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, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

#### **Failure to Provide Timely, Uninterrupted Meal Breaks and Second Meal Breaks**

##### **(Cal. Labor Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*)**

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all its hourly employees with their right to take all required timely, off-duty, unpaid 30-minute meal periods. 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...An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

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

On many occasions, Claimant did not receive their first meal break within the first 5 hours of their shift. In addition, Claimant never received their second meal period for shifts over 10 hours. Employer failed to assure Claimant and others take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7, 512, and 1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties,

thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

### **Failure to Provide Rest Breaks**

#### **Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *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. Claimant reports that he and his coworkers never received their third rest breaks on shifts of over 10 hours. Employees did not clock out for meal or rest periods, the time spent during the meal and rest periods were manually written in and deducted from wages. This practice was consistent with Employer manually logging all of Employees hours for shifts worked. Claimant was not provided with any third rest periods for shifts over 10 hours during the time of his employment.

Employer did not authorize or permit all of its 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 16-2001 11(A). According to Claimant, he never received his third rest break during shifts of 10 or more hours, and this experience is consistent with that of other aggrieved employees. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Moreover, although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work,” even in those instances, the missed rest period must be made up in that same day or the Employer must compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

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

#### **(Cal. Lab. Code §§201, 202 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.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein,

Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including meal/rest periods and overtime pay. 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, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

**Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records**

**(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*)**

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

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected

actual gross wages earned, including overtime and meal/rest premiums and total regular, overtime, and double time hours worked.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

### **Conclusion**

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

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

Nazo Koulloukian, Esq.  
Attorney for Claimant

**PROOF OF SERVICE**

**Case No. 34-2021-00307786**  
***Valdez v. AUS Decking, Inc.***

I, NAZO KOULLOUKIAN declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On October 12, 2021, I served the foregoing document described as:

**FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

- \_\_\_\_\_ by placing the document(s) listed above in a sealed envelope, addressed as set forth below, and placing the envelope for collection and mailing in the place designated for such in our offices, following ordinary business practices.
- \_\_\_\_\_ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00PM.
- X\_\_\_\_\_ by transmitting via electronic mail the document(s) listed above to the electronic mailing address set forth below on this date before 5:00PM.

on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Los Angeles, California addressed as follows:

**SEE ATTACHED SERVICE LIST**

I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this October 12, 2021, in Los Angeles, California.

  
\_\_\_\_\_  
NAZO KOULLOUKIAN

**PROOF OF SERVICE**

**Case No. 34-2021-00307786**  
***Valdez v. AUS Decking, Inc.***

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San Jose, CA 95113  
Attorneys for **Defendant, AUS DECKING, INC.**