

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NOLAN RUSK,	)	CASE NO.: 21STCV42406
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
vs.	)	1) PRIVATE ATTORNEYS GENERAL
	)	ACT ("PAGA");
	)	
310 RECOVERY, INC.; VALENTINE	)	
GASPARYAN; H PARKER FEHN;	)	
and DOES 1 to 25, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

COMES NOW Plaintiff, NOLAN RUSK (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants 310 RECOVERY, INC.; VALENTINE GASPARYAN; H PARKER FEHN and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendants"), do business in the County of Los Angeles, and because

1 Defendants' obligations and liabilities arise therein, and because the work that was performed
2 by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's
3 damages sought herein exceed \$25,000.

4 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

5 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
6 310 RECOVERY, INC. is a California corporation, doing business in the County of Los
7 Angeles, State of California, and which employed Plaintiff.

8 4. Defendant VALENTINE GASPARYAN is an individual, who at all relevant times and
9 on information and belief resided in the State of California. Plaintiff is informed and believes
10 that Defendant VALENTINE GASPARYAN was acting on behalf of and was the managing
11 agent and owner of 310 RECOVERY, INC. Plaintiff is informed and believes and thereon
12 alleges that VALENTINE GASPARYAN controlled the wages, hours and working conditions
13 of Plaintiff and other aggrieved employees and is being included in this lawsuit pursuant to
14 Labor Code Section 558.1.

15 5. Defendant H PARKER FEHN is an individual, who at all relevant times and
16 on information and belief resided in the State of California. Plaintiff is informed and believes
17 that Defendant H PARKER FEHN was acting on behalf of and was the managing agent and
18 owner of 310 RECOVERY, INC. Plaintiff is informed and believes and thereon alleges that H
19 PARKER FEHN controlled the wages, hours and working conditions of Plaintiff and other
20 aggrieved employees and is being included in this lawsuit pursuant to Labor Code Section
21 558.1. 310 RECOVERY, INC., VALENTINE GASPARYAN, and H PARKER FEHN are
22 collectively referred to as "Defendant(s)" or 310 RECOVERY.

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1 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
2 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
3 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
4 defendants, numbers 1 to 25, reside in the State of California and are in some manner
5 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
6 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
7 and capacities of these fictitiously named defendants.
8

9 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
10 that information and belief, alleges that at all times herein mentioned, each of the remaining
11 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
12 under the authority of their agency, employment, or representative capacity, with the consent
13 of his/her codefendants.
14

15 **GENERAL ALLEGATIONS**

16 8. Plaintiff started working for 310 RECOVERY on or around April 2019 as a Med and
17 Lead Tech, which was an hourly, non-exempt position. Plaintiff's latest rate of pay was \$18.00
18 per hour. Plaintiff generally worked Monday through Friday but did work a significant amount
19 of overtime hours. Plaintiff stopped working for 310 RECOVERY on or around October 21,
20 2020.

21 9. It is Plaintiff's position that 310 RECOVERY has violated numerous Labor Code
22 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
23 non-exempt, hourly employees who worked for 310 RECOVERY during the relevant PAGA
24 period.

25 10. 310 RECOVERY violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
26 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
27 the statutory minimum wage for all hours worked and for "off the clock" work. Plaintiff and
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1 other similarly situated aggrieved employees would often complete work tasks before clocking
2 in and after clocking out. Moreover, Plaintiff would receive calls non-stop while not at work and
3 while “off the clock”. Management/ownership was unequivocally aware of the latter “off the
4 clock” work but did not compensate Plaintiff and others for these hours worked which translates
5 into a minimum wage violation. Moreover, 310 RECOVERY had a policy of rounding down
6 hours worked by employees to their detriment, and which resulted in employees such as Plaintiff
7 not being paid for all hours worked, including receiving the minimum wage. Furthermore, to the
8 extent that 310 RECOVERY did in fact deduct time from Plaintiff’s timesheets for meal periods
9 that were not actually taken, that would also be a violation of the minimum wage laws.

10 11. Due to the above “off the clock” violations, 310 RECOVERY also violated Labor Code
11 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
12 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
13 throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours
14 entitled them to overtime compensation, however, 310 RECOVERY did not compensate its
15 hourly, non-exempt employees with the correct amount of overtime. In addition, to the extent
16 310 RECOVERY gives its employees non-discretionary bonuses, it does not factor that bonus
17 in calculating the employees’ regular rate of pay for the purposes of calculating the correct
18 amount of overtime compensation.

19 12. 310 RECOVERY also violated Labor Code § 226.7 and the appropriate Industrial
20 Welfare Commission Wage Order no. 4 or 5 because it failed to provide Plaintiff and other
21 similarly situated aggrieved employees with 10-minute rest periods for every four hours of work,
22 or majority portion thereof, throughout their employment. 310 RECOVERY did not completely
23 relieve Plaintiff and others of all duty during said rest periods. 310 RECOVERY did not pay to
24 Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
25 workday that one or more statutory rest periods was not provided. It was not part of the company
26 policy for employees such as Plaintiff to take rest breaks. The concept of rest breaks was never
27 discussed with employees, nor was it ever implemented as it was not company policy. Moreover,
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1 it would not have been possible for employees such as Plaintiff to take such rest breaks due to a
2 major understaffing problem at 310 RECOVERY and due to the constant work that had to be
3 performed, including running the complete operation of the swing shift and med room along
4 with distributing meds. As such, the culture at 310 RECOVERY did not lend itself to the
5 employees receiving statutory rest breaks wherein they were relieved of all work duties. The
6 environment at 310 RECOVERY was not conducive to receiving statutory rest breaks under
7 California law and timely, statutory rest breaks were not authorized or enforced.

8 13. 310 RECOVERY violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
9 Commission Wage Order no. 4 or 5 because it failed to provide hourly, non-exempt employees,
10 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
11 (5) hours of work throughout their employment. 310 RECOVERY did not completely relieve
12 Plaintiff and other employees of all duty during said meal periods. 310 RECOVERY did not
13 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
14 rate of compensation for each workday that one or more statutory meal periods was not provided.
15 The hourly, non-exempt employees, including Plaintiff, would often not be able to receive their
16 meal periods before the 5th hour worked due to understaffing and having no one relieve them.
17 Furthermore, Plaintiff and others were not always relieved of all duty during meal periods as the
18 meal periods were often interrupted, especially if the meal period was taken on the premises.
19 Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part
20 of the company culture and was not enforced by 310 RECOVERY. If 310 RECOVERY had
21 Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and
22 others generally worked more than a 6-hour shift. If 310 RECOVERY had Plaintiff sign an on-
23 duty meal period agreement wherein Plaintiff agreed to work through his meal period, it would
24 also be invalid and unenforceable because the nature of Plaintiff's job does not prevent him from
25 taking a meal period as 310 RECOVERY could have found someone to cover for Plaintiff during
26 his statutory meal periods. Consequently, it was the normal practice and custom of 310
27 RECOVERY not to authorize, permit, and enforce timely statutory meal periods. Additionally,
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1 providing a meal in lieu of an actual uninterrupted, timely meal period is not legal under
2 California law.

3 14. It is also important to note that Plaintiff would consistently complain about the meal and
4 rest break violations and would be told “too bad, that’s the work” or “that’s the industry”.

5 15. Furthermore, during the relevant time period and based on the above, 310 RECOVERY
6 failed to pay Plaintiff and others all wages due to them within any time period specified by
7 California Labor Code section 204. In addition, there were occasions wherein Plaintiff’s
8 paychecks were received late and in contravention of Labor Code Section 204.

9 16. 310 RECOVERY was also in violation of California Labor Code section 226(a), by
10 failing to include pertinent information on the wage statements, including but not limited to, the
11 full and correct name of the legal employer along with the employer’s correct legal address
12 (paystubs fail to indicate 310 RECOVERY INC. as the employer but only mention “Hauser
13 Detox Centers”), all hours worked (including “off the clock” hours and overtime), all applicable
14 hourly rates in effect, the correct identifying information for each employee, gross wages earned,
15 net wages earned, premium pay for the missed meal and rest breaks, the correct start and end of
16 the pay period, all deductions, and business expense reimbursement, among others. As such, 310
17 RECOVERY did not provide Plaintiff and other similarly situated aggrieved employees with
18 complete, accurate itemized wage statements.

19 17. During the relevant time period, 310 RECOVERY also failed to keep accurate and
20 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
21 and others pursuant to California Labor Code sections 1174(d).

22 18. 310 RECOVERY also violated Labor Code § 203 because it willfully failed to pay
23 similarly situated aggrieved employees earned and due wages upon separation of employment,
24 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
25 but unpaid wages include compensation for all hours worked, including minimum wages,
26 overtime compensation, premium pay for missed meal and rest breaks, and business expense
27 reimbursement.
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1 19. Also, during the relevant time period, Plaintiff and other aggrieved employees incurred
2 necessary, business-related expenses and costs that were not reimbursed by 310 RECOVERY.
3 These costs include, but are not limited to, the use of personal cell phones for work purposes,
4 including getting calls and/or texts on off-days regarding work related issues. There were also
5 occasions wherein Plaintiff would have to drive his personal vehicle (as opposed to the company
6 van) to run work errands, such as doing “store runs”. Management was unequivocally aware that
7 Plaintiff was utilizing his personal vehicle, however, Plaintiff was not reimbursed his mileage.
8 Accordingly, 310 RECOVERY was in violation of California Labor Code sections 2800 and
9 2802.

10 20. Moreover, 310 RECOVERY failed to provide sick pay pursuant to Labor Code
11 section 246 and also failed to provide Worker’s Compensation coverage for Plaintiff and other
12 aggrieved employees in violation of Labor Code Section 3700.5.

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Individual and Representative Claim for PAGA penalties under California Labor Code**
16 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
17 **1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 and the applicable Industrial Welfare**
18 **Commission Wage Order Nos. 4-2001/5-2001**

19 **(Plaintiff Against All Named Defendants and all DOE Defendants)**

20 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

22 22. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
23 Defendants of the specific violations of the California Labor Code that Defendants
24 and DOE defendants have violated and continue to violate.

25 23. Pursuant to California Labor code section 2699.3, no response was received from the
26 LWDA within 65 days of the postmark date of the above-alleged letter.

27 24. Plaintiff therefore has exhausted all administrative remedies required of him under
28 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
cause of action and pursue penalties in a representative action for Defendants’ violations of the

1 Labor Code.

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

9 26. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
10 violator and had one or more of the alleged violations committed against him, and therefore is
11 properly suited to represent the interests of other current and former hourly, non-exempt
12 employees who worked for 310 RECOVERY in the State of California at any and all locations
13 during the PAGA period.

14 27. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
15 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
16 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

17 28. Plaintiff therefore has exhausted all administrative remedies required of him under
18 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
19 cause of action and pursue penalties in a representative action for Defendants’ violations of the
20 Labor Code.

21 29. California Labor Code section 2699 et seq. imposes penalties upon culpable
22 Defendants for violating the Labor Code.

23 30. California Labor Code section 558 establishes a civil penalty as follows: Any
24 employer or other person action on behalf of an employer who violates, or causes to be
25 violated, a section of this chapter or any provision regulating hours and days of work in any
26 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
27 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
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dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid ...;

31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages under this particular cause of action.

32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, and 3700.5 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 4/5) violated on the facts alleged in this Complaint.

33. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

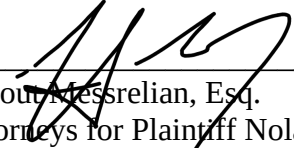
WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698 et seq., and/or other applicable laws; and

1 5. For such other and further relief as this Court may deem proper.

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3 DATED: November 16, 2021

MESSRELIAN LAW INC.

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5 By  _____

6 Harout Messrelian, Esq.

7 Attorneys for Plaintiff Nolan Rusk
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