

FILED
Superior Court Of California,
Sacramento
11/08/2021
neanmigual
By _____, Deputy
Case Number:
34-2021-00309030

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Jeff Geraci (SBN 151519)

jgeraci@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

LAW OFFICES OF SAHAG MAJARIAN II

Sahag Majarian (SBN 146621)

sahagii@aol.com

Garen Majarian (SBN 334104)

garen@majarianlawgroup.com

18250 Ventura Blvd.

Tarzana, CA 91356

Telephone: (818) 609-0807

Facsimile: (818) 609-0892

Attorneys for Rebecca De Benning, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Rebecca De Benning, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

Costco Wholesale Corporation, a
Washington Corporation; and Does 1
Through 10, Inclusive,

Defendants.

Case No. 34-2021-00309030

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
and JURY DEMAND**

**1. FAILURE TO PROVIDE SICK PAY
(Labor Code § 246)**

**2. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION FROM
EMPLOYMENT
(Labor Code §§ 201-203)**

**3. VIOLATIONS OF THE UNFAIR
COMPETITION LAW
(Bus. & Prof. Code §§ 17200, et seq.)**

**4. PAGA PENALTIES FOR FAILURE TO
PROVIDE SICK PAY
(Labor Code § 246)**

**5. PAGA PENALTIES FOR FAILURE TO
TIMELY PAY FINAL WAGES
(Labor Code § 201-203)**

DEMAND FOR JURY TRIAL

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NATURE OF CLAIM

1. Plaintiff Rebecca De Benning ("Plaintiff") brings this action on behalf of herself and a proposed Class of all non-exempt California employees of Defendant Costco Wholesale Corporation ("Costco") and DOES 1 through 10 (collectively, "Defendants") for failing to pay correctly-calculated sick pay and failing to pay these unpaid amounts upon termination, in violation of Labor Code sections 201-203 and 246 and Business and Professions Code sections 17200 *et seq.* Plaintiff seeks unpaid wages, interest, attorneys' fees, and costs.

2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the State of California, and aggrieved current and former non-exempt California employees of Defendant Costco Wholesale Corporation. Plaintiff notified the California Labor and Workforce Development Agency ("LWDA") of these claims. The LWDA did not intervene, and Defendants did not attempt to cure within the time required. Plaintiff seeks civil penalties as a representative of the State of California, as provided by the Private Attorneys General Act ("PAGA"), on behalf of the aggrieved employees who held the positions identified and suffered one or more of the violations alleged for the period one year and 65 days from the date of filing for PAGA penalties ("PAGA Period"). A true and correct copy of the August 30, 2021 Notice showing compliance with Labor Code section 2699.3 is attached as **Exhibit 1**.

PARTIES

3. Plaintiff is a Sacramento County resident who worked as a non-exempt, hourly-paid cashier for Defendants at Costco's Folsom facility from June 19, 2013 through approximately March 26, 2021, when she took a leave of absence.

4. Defendant Costco is a Washington Corporation doing business throughout California and is the nation's largest wholesale club operator.

5. Does 1 through 10, inclusive, are persons or entities whose true names and identities are now unknown to Plaintiff, and who are sued by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when known. Plaintiff is informed and believes each Doe defendant is the agent, representative, or parent or subsidiary corporation of Costco, is responsible in some manner for the occurrences, events, transactions, and injuries

1 alleged, and that harm suffered by Plaintiff and the proposed Class was proximately caused by
2 them in addition to Costco.

3 6. Plaintiff alleges each Defendant, including the Doe defendants, acted in concert
4 with each and every other Defendant, intended to and did participate in the events, acts, practices,
5 and courses of conduct alleged, and was a proximate cause of damage and injury to Plaintiff.

6 7. At all relevant times each Defendant was the agent or employee of each of the
7 other Defendants and was acting within the course and scope of such agency or employment.

8 8. Plaintiff is an "aggrieved employee" because she was employed by the alleged
9 violators and had one or more of the alleged violations committed against her and, she is properly
10 suited to represent the interests of all other current and former employees of Defendants.

11 9. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent
12 all current and former aggrieved employees who suffered one or more of the alleged violations
13 ("aggrieved employees") during the applicable limitations period for the PAGA Period.

14 **JURISDICTION AND VENUE**

15 10. Venue as to each Defendant is proper in this judicial district. Code of Civil
16 Procedure § 395. Defendants conduct business in Sacramento County and each Defendant is
17 within this Court's jurisdiction for service of process. The unlawful acts alleged directly affect
18 Plaintiff and similarly-situated employees within Sacramento County and California. There is no
19 federal question at issue for removal under 28 U.S.C. section 1331, as the issues are based solely
20 on California law, including the Labor Code, Business and Professions Code, and the Code of
21 Civil Procedure.

22 11. No federal question is raised and the Class Action Fairness Act ("CAFA"), 28
23 U.S.C. section 1332(d), does not apply, or in the alternative, local case or controversy exceptions
24 apply and prohibit removal of this action. Based on her rate of pay, Plaintiff's individual claims
25 do not meet the amount in controversy to implicate traditional diversity jurisdiction.

26 12. As a PAGA representative action, this matter is not subject to removal under 28
27 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

28 ///

CLASS ACTION ALLEGATIONS

13. Plaintiff seeks to represent Classes defined as:

Class

All Defendants' non-exempt California employees at any time during the four years before the filing of this Complaint through the date of trial.

14. Plaintiff seeks to certify a subclass of employees defined as:

"Sick Pay Subclass"

All Class Members who were paid sick pay in a period in which they earned any other pay that should have been included in their sick pay wages.

15. Plaintiff seeks to certify a subclass of employees defined as:

"Waiting Time Subclass"

All Class Members whose employment ended at any time during the three years preceding the filing of this Complaint.

16. Plaintiff seeks to certify a subclass of employees defined as:

"UCL Subclass"

All Class and Subclass Members who were subject to Defendants' unlawful or unfair business acts or practices.

17. Plaintiff reserves the right to amend or modify the Class description, including by division into subclasses or limitation to particular issues. California Rule of Court 3.765(b).

18. **Commonality**: This action may be maintained as a class action because there is a well-defined common interest of many persons and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

19. **Ascertainable Class**: The proposed Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

20. **Numerosity**: The potential members of the Class are so numerous, joinder of all members would be impractical. The disposition of their claims through a class action will benefit the parties and this Court. The number of Class members is unknown to Plaintiff, but estimated to be more than 100 individuals, which can be readily ascertained using Defendants' records.

21. **Typicality**: The claims of Plaintiff are typical of the claims of all members of the Class and Subclasses because all members of the Class and Subclasses sustained similar injuries and damages caused by Defendants' common course of conduct in violation of law.

22. **Adequacy**: Plaintiff is an adequate representative of the Class and Subclasses,

1 will fairly protect the interests of the Class and Subclass Members and has no interests
2 antagonistic to them, and will vigorously pursue this suit. Plaintiff's attorneys are competent,
3 skilled, and experienced in litigating large employment law class actions.

4 23. **Superiority**: A class action is superior to other available means for the fair and
5 efficient adjudication of this controversy. Individual joinder of all Class Members is not
6 practicable, and questions of law and fact common to the Class predominate over questions
7 affecting only individual Class Members. A Class action will allow those similarly situated to
8 litigate their claims in the most efficient and economical manner for the parties and the judicial
9 system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this
10 action that precludes its maintenance as a class action.

11 24. The predominating common questions of law and fact include:

- 12 a. Whether Defendants have a policy or practice of failing to pay sick pay at the
13 correct rate;
- 14 b. Whether the Class and Waiting Time Subclass Members are entitled to
15 waiting time penalties under Section 203;
- 16 c. Whether Defendants violated Sections 17200, *et seq.* of the Business and
17 Professions Code; and
- 18 d. Whether the Class and Subclasses are entitled to equitable relief pursuant to
19 Business and Professions Code, sections 17200, *et seq.*

20 **FACTUAL ALLEGATIONS**

21 25. At all relevant times, Plaintiff and similarly-situated and aggrieved were
22 employed by Defendants in California, and Defendants conducted business in California.

23 26. Defendants failed to pay Plaintiff and similarly-situated and aggrieved employees
24 sick pay at the correct rate. Plaintiff received compensation in addition to hourly wages, but those
25 additional amounts were not included when calculating sick pay wages. For example, on
26 Plaintiff's October 2, 2020 paystub, she earned "Extra Check-Hourly" pay of \$465.23 and "Extra
27 Check OT" pay of \$1.73 which were not factored into her sick pay wages for leave taken in the
28 same workweek. On her October 16, 2020 paystub, Plaintiff earned "Outstanding Service" pay

1 of \$261.45 which was not used to calculate her sick pay wages. Plaintiff, and others similarly
2 situated and aggrieved, were paid sick pay at the base hourly pay rate.

3 27. Because Defendants failed to pay all earned wages to Plaintiff and other similarly-
4 situated and aggrieved employees, Defendants failed to timely pay all final wages due to these
5 employees.

6 28. Plaintiff, on behalf of herself and Class Members, seeks injunctive relief,
7 restitution, and disgorgement of all benefits obtained by Defendants as a result of violations
8 alleged. Business and Professions Code §§ 17200, *et seq.*

9 **FIRST CAUSE OF ACTION**

10 **Failure to Provide Sick Pay, Labor Code § 246**
11 **(By Plaintiff and each Sick Pay Subclass Member)**

12 29. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 30. Sick pay must be compensated at the employee's regular rate of pay, for the
14 workweek in which the paid leave was taken, or at a rate determined by averaging over 90-days.
15 Labor Code § 246(l).

16 31. By failing to pay Plaintiff and Class Members for sick pay at the correct rate,
17 Defendants willfully violated Labor Code section 246.

18 32. Defendants' unlawful acts deprived Plaintiff, the Class, and the Sick Pay Subclass
19 Plaintiff seeks to represent of sick pay in amounts to be determined at trial, and they are entitled
20 to recover these amounts, with interest, attorneys' fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Timely Pay Wages Due at Separation from Employment**
23 **Labor Code §§ 201-203**
24 **(By Plaintiff and each Waiting Time Subclass Member)**

25 33. Plaintiff incorporates the preceding paragraphs of this Complaint.

26 34. An employer who discharges an employee must pay all compensation due and to
27 that employee immediately upon discharge. Labor Code § 201. An employer must pay all
28 compensation due to an employee who quits within 72 hours. Labor Code § 202.

35. Defendants had a consistent and uniform policy of willfully failing to timely pay
earned wages to former employees. If an employer willfully fails to timely pay such wages the

1 employer must, as a penalty, continue to pay an employee's wages until paid or until an action is
2 commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

3 36. Waiting Time Subclass Members are no longer employed by Defendants.

4 37. Defendants willfully failed to pay Waiting Time Subclass Members all wages due
5 at involuntary termination or within seventy-two (72) hours of resignation, and failed to pay those
6 sums for thirty (30) days after.

7 **THIRD CAUSE OF ACTION**
8 **Violation of the Unfair Competition Law**
9 **Bus. & Prof. Code §§ 17200 *et seq.***
10 **(By Plaintiff and each UCL Subclass Member)**

11 38. Plaintiff incorporates the preceding paragraphs of this Complaint.

12 39. Unfair competition includes any "unlawful," "unfair," or "fraudulent" business
13 act or practice. Cal. Bus. & Prof. Code § 17200.

14 40. Defendants' conduct as described above constitutes unlawful business practices
15 because Defendants violated sections 201-203 and 246.

16 41. Defendants' conduct as described above constitutes unfair business practices
17 because their denial of lawfully earned wages outweighs any utility of such practices.

18 42. As a result of Defendants' unlawful and unfair conduct, Plaintiff and Class
19 Members suffered injury in fact.

20 43. Plaintiff and Class Members seek declaratory and injunctive relief, restitution, and
21 other appropriate equitable relief. Cal. Bus. & Prof. Code §§ 17203, 17204.

22 44. Pursuant to California Code of Civil Procedure section 1021.5, Plaintiff and Class
23 Members are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in
24 bringing this action.

25 45. This cause of action is brought as a cumulative remedy and is intended as an
26 alternative remedy for restitution for Plaintiff, and each Subclass Member, for the four (4)-year
27 period before the filing of this Complaint, and as the primary remedy during the fourth year
28 before the filing of this Complaint. Business and Professions Code § 17205.

///

FOURTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Provide Sick Pay
Labor Code § 246

(By Plaintiff and Aggrieved Employees Against Defendant)

46. Plaintiff incorporates the preceding paragraphs of this Complaint.

47. Employers must calculate paid sick leave for non-exempt employees in one of two ways (Labor Code § 246 (l)):

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

48. Plaintiff was paid sick leave wages at her base hourly rate of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(1).

49. By failing to pay Plaintiff and other aggrieved employees for sick pay at the correct rate, Defendants willfully violated the provisions of Labor Code section 246.

50. Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Labor Code § 2699(f)(2).

FIFTH CAUSE OF ACTION
PAGA Civil Penalties for Failure to Timely Pay Wages Due at Separation from Employment

Labor Code §§ 201-203

(By Plaintiff and Aggrieved Employees against Each Defendant)

51. Plaintiff incorporates the preceding paragraphs of this Complaint.

52. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's

1 wages for 30 days, or until back wages are paid in full. Labor Code § 203.

2 53. Defendants failed to pay Plaintiff and other aggrieved employees all final wages,
3 including sick pay, as required by Labor Code sections 201-202. Defendants failed to pay
4 Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay
5 all final wages in a timely manner as required by Labor Code section 203.

6 54. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not
7 reimbursed, and \$200 for each subsequent violation.

8 **PRAYER FOR RELIEF**

9 Plaintiff prays for the following relief on behalf of herself and the Class:

10 1. Certification of this action as a class action and appointment of Plaintiff and
11 Plaintiff's counsel to represent the Class;

12 2. Provision of class notice to Class Members as defined above;

13 3. A declaratory judgment that Defendants knowingly and intentionally violated:

14 a. Labor Code section 246 by failing to pay sick pay at the correct rate;

15 b. Labor Code section 203 by failing to pay waiting time penalties; and

16 c. Business and Professions Code sections 17200, *et seq.* by engaging in
17 unlawful or unfair business practices.

18 4. That Defendants be permanently enjoined from engaging in the unlawful or unfair
19 acts and practices alleged;

20 5. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff
21 and Class Members, in an amount according to proof, pursuant to California Business and
22 Professions Code section 17203;

23 6. That this action be maintained as a PAGA Representative Action, and that
24 Plaintiff and her counsel be provided with all enforcement capability as if this action were
25 brought by the California Division of Labor Standards Enforcement;

26 7. For recovery of all civil penalties permitted by Labor Code section 2699 for
27 unpaid or underpaid sick pay pursuant to Labor Code section 246, according to proof;

28 8. For recovery of all civil penalties permitted by Labor Code section 2699 for

unpaid final wages and waiting time penalties pursuant to Labor Code sections 201-203, according to proof;

9. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i);

10. Compensatory damages according to proof;

11. Statutory damages under the Labor Code;

12. Pre-judgment interest on all sums collected;

13. Reasonable attorneys' fees and costs, pursuant to California Code of Civil Procedure section 1021.5, and the California Labor Code, or other applicable law;

14. Costs of suit; and

15. Such other relief as the Court may deem appropriate.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: November 8, 2021

By: 
Michael D. Singer, Esq.
Jeff Geraci, Esq.
Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Rebecca De Benning, on
behalf of herself and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

Dated: November 8, 2021

By: 
Michael D. Singer, Esq.
Jeff Geraci, Esq.
Rosemary C. Khoury, Esq.

Attorneys for Plaintiff Rebecca De Benning, on
behalf of herself and all others similarly situated

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC*

(*Also admitted in the District of Columbia)
(*Also admitted in Colorado)

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

August 30, 2021

JEFF GERACI
J. JASON HILL†
KRISTINA DE LA ROSA
ROSEMARY C. KHOURY

(† Also admitted in Illinois)

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR CODE SECTIONS 2698, *et seq.*

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified U.S. Mail with Return Receipt

Costco Wholesale Corporation
999 Lake Drive
Issaquah, WA 98027

Costco Wholesale Corporation
c/o C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Re: Notice by Rebecca De Benning, on behalf of herself and all other aggrieved California employees of Costco Wholesale Corporation, as an individual and proposed Representative of the State of California

Dear PAGA Administrator and Costco Wholesale Corporation:

Rebecca De Benning ("Claimant") intends to bring a Private Attorneys General Act ("PAGA") action against Costco Wholesale Corporation ("Costco") on behalf of herself and all other aggrieved employees. In this notice, "aggrieved employees" means all non-exempt California employees of Costco subject to the policies and practices described below, including but not limited to cashiers.

Factual Statement

Rebecca De Benning worked as an hourly-paid, non-exempt cashier at Costco's Folsom facility from June 19, 2013 through approximately March 26, 2021, when she took a leave of absence.

Claimant received compensation, including bonuses, in addition to her hourly wages while employed by Costco. Those additional amounts should have been included when calculating her regular rate of pay and used when paying overtime wages, premium wages, and sick leave wages, but were not. For example, on her October 2, 2020 paystub, Claimant earned "Extra Check-Hourly" pay of \$465.23 and "Extra Check OT" pay of \$1.73 which were not factored into her regular rate of pay to calculate her sick leave wages nor her overtime wages earned in the same period. Additionally, on her October 16, 2020 paystub, Claimant earned "Outstanding Service" pay of \$261.45 which was not factored into her regular rate of pay to calculate her sick leave wages nor her overtime wages earned in the same period. In each example, Claimant was improperly paid sick leave wages at her base hourly rate and overtime

wages at exactly one and one-half times her base hourly rate. Further, Costco routinely paid meal period premium wages, denominated "Meal Period pmt CA only," to Claimant at her base hourly rate of pay. On information and belief, Costco did not factor "Extra Check-Hourly" pay, "Extra Check OT" pay, and "Outstanding Service" pay, among other applicable compensation, into employees' regular rates of pay to calculate their meal period premium wages.

Costco paid Claimant some compensation late, including "Extra Check" and "Outstanding Service" pay. For instance, Claimant's October 16, 2020 paystub states "This Extra Check payment is for the measurement period 3/16/20 through 9/13/2020." Further, Claimant's October 30, 2020 paystub states "Outstanding Service = \$ for all worked hours 8/31 through 9/27/20, paying straight time, OT, DT at \$2, \$3, \$4." Both of these payments were made late under Labor Code section 204, which requires that wages earned between the 1st and 15th of the month must be paid by the 26th of the same month and those earned between the 16th and last day of the month must be paid by the 10th of the following month.

Wage statements issued by Costco did not show the rate at which "Outstanding Service" pay was paid, nor the number of hours worked at the "Outstanding Service" rate of pay. For instance, on Claimant's October 16, 2020 paystub, Claimant earned "Outstanding Service" pay of \$261.45, but no rate of pay nor number of hours is listed alongside this payment. Further, Costco's wage statements did not accurately show the rate at which sick leave, overtime, or premium wages, should have been paid.

Claimant further alleges, based on personal experience and observations, that the violations of the Labor Code described herein were suffered by other aggrieved employees of Costco.

Summarizing the claims on behalf of Claimant and all other aggrieved employees of Costco, Costco failed to:

1. Pay sick leave wages, meal period premium wages, and overtime wages at employees' regular rates of pay;
2. Timely pay wages due during employment;
3. Timely pay final wages; and
4. Provide accurate itemized wage statements.

SICK LEAVE WAGES
(Labor Code § 246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the

employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant was paid sick leave wages at her base hourly rate of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

MEAL PERIODS AND PREMIUM WAGES

(Labor Code §§ 512 and 226.7)

Employers must provide employees a 30-minute, uninterrupted meal period after no more than five hours of work, and a second such meal period after no more than 10 hours work. Labor Code § 512(a); IWC Wage Order(s) § 11(A)-(B); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049.

If an employer fails to provide an employee a meal period in accordance with California law, the employer must pay the employee one hour of pay at the employee's regular rate for each work day the meal period is not provided. Lab. Code § 226.7(c); IWC Wage Order(s), § 11(D); *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 (holding "the calculation of premium pay for a noncompliant meal...period, like the calculation of overtime pay, must account for not only hourly wages but also other nondiscretionary payments for work performed by the employee.")

Costco failed to pay meal period premium wages at the regular rate of pay, instead paying meal period premiums at aggrieved employees' base hourly rates.

OVERTIME WAGES

(Labor Code §§ 510, 1194)

Employers must pay overtime wages for hours worked over eight per day or forty per week at one and one-half times an employee's regular rate of pay. Labor Code §§ 510, 1194.

When Claimant worked overtime, she was paid overtime wages at one and one-half times her base rate of pay, rather than her regular rate of pay.

WAGES DUE DURING EMPLOYMENT

(Labor Code § 204)

"All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month." Labor Code § 204.

CA Labor & Workforce Development Agency
Costco Wholesale Corporation
Re: Rebecca De Benning
August 30, 2021
Page 4

Costco paid some wages, including "Extra Check" and "Outstanding Service" pay, late in violation of Labor Code section 204.

FINAL WAGES
(Labor Code § 201-203)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Labor Code §§ 201-202. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days, until paid. Labor Code § 203.

As a result of its willful failure to pay all properly-calculated wages, Costco failed to timely pay all final wages to Claimant and other aggrieved employees in violation of Sections 201-203.

WAGE STATEMENTS
(Labor Code § 226)

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," "net wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Labor Code §§ 226(a)(1), (5), (9).

Costco's wage statements did not show the rate and hours corresponding to "Outstanding Service" pay and did not accurately show the rate at which sick leave, overtime, or premium wages, should have been paid.

CONCLUSION

Claimant requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above against Costco. If the LWDA does not pursue enforcement, Claimant will pursue claims for statutory penalties and seek all remedies available for Costco's violations of the Labor Code and applicable Industrial Welfare Commission Wage Order, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


Jeff Geraci, Esq.

cc (via email only):
Sahag Majarian, Esq.
sahagii@aol.com
Garen Majarian, Esq.
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356

RECEIVED
IN DROP BOX

2021 NOV -8 PM 2:58

DOWNTOWN COURTHOUSE
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO