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on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MARIA CARRENO, on behalf of herself and
other aggrieved employees,

Plaintiff,

vs.

ALTMAN SPECIALTY PLANTS, LLC.; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: 37-2022-00006712-CU-OE-CTL

PAGA ACTION

**PLAINTIFF MARIA CARRENO'S
COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

DEMAND FOR JURY TRIAL

COME NOW Plaintiff MARIA CARRENO ("Plaintiff"), who alleges and complains
against Defendants ALTMAN SPECIALTY PLANTS, LLC and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
("PAGA"). representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly, non-
exempt employees, in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendant's failure to provide all legally

1 required and legally compliant rest periods, and failure to provide complete and accurate wage
2 statements. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
3 Development Agency, civil penalties, reasonable attorney's fees pursuant to Labor Code section
4 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

5 **II. JURISDICTION AND VENUE**

6 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
7 Plaintiff's lawsuit seeks damages in excess of \$25,000 and Defendants employed class members
8 and injuries occurred in locations in California including but not limited to San Diego County at
9 3742 Blue Bird Canyon Road, Vista, California 92084.

10 **III. PARTIES**

11 3. Plaintiff brings this action as a representative of the Labor and Workforce
12 Development Agency on behalf of herself and other current and former employees subject to
13 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
14 filed include current, former and/or future employees of Defendants who worked, work, or will
15 work for Defendants as non-exempt hourly employees in California. At all times mentioned
16 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
17 and was employed by Defendants in an hourly position at Defendants' location in San Diego from
18 approximately in or around January 2020, until on or about June 2021.

19 4. Plaintiff is informed and believes and thereon alleges that Defendant ALTMAN
20 SPECIALTY PLANTS, LLC is authorized to do business within the State of California and is
21 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
22 relevant hereto were persons acting on behalf of Defendant ALTMAN SPECIALTY PLANTS,
23 LLC in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
24 or policies. Defendant ALTMAN SPECIALTY PLANTS, LLC operates in San Diego County and
25 employed Plaintiff and putative class members in San Diego County, including but not limited to,
26 at 3742 Blue Bird Canyon Road, Vista, California 92084.

27 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
28 through 50 are corporations, or are other business entities or organizations of a nature unknown to

1 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
2 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
3 working conditions of employment of Plaintiff and aggrieved employees.

4 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
5 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
6 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
7 supervisor, independent contractor and/or employee of each defendant who violated or caused to
8 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
9 the Industrial Welfare Commission's wage orders regulating hours and days of work.

10 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
11 sues said defendants by said fictitious names, and will amend this complaint when the true names
12 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
13 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
14 named defendants is in some manner responsible for the events and allegations set forth in this
15 complaint.

16 8. Plaintiff makes the allegations in this complaint without any admission that, as to
17 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
18 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

19 **DISTINCTION BETWEEN PREMIUM WAGE AND STATUTORY PENALTY**

20 9. "Where damages are obscure and difficult to prove, the Legislature may select a set
21 amount of compensation without converting that remedy into a penalty." (*Overnight Motor*
22 *Transp. Co. v. Missell* (1942) 316 U.S. 572, 583-84.) In *Murphy v. Kenneth Cole Productions*
23 (2007) 40 Cal.4th 1094 (1103-1104), the Court distinguished a premium wage from a penalty:

24 The Statute's plain language, the administrative and legislative history, and the
25 compensatory purpose of the remedy compel the conclusion that the "additional
26 hour of pay is a premium wage intended to compensate employees, not a penalty."

27 10. "Under a PAGA claim, the government entity on whose behalf the plaintiff files
28 suit is always the real party in interest." (*Iskanian v. CLS Transportation Los Angeles, LLC.*
(2014) 59 Cal4th 348, 378). PAGA was passed through the Legislature with the stated intent of

1 deputizing aggrieved employees with the power to pursue statutory penalties on behalf of the
2 Labor Board, a public entity working for the benefit of the people of California.

3 11. Employees who were subject to at least one unlawful practice, labelled under
4 PAGA as an “Aggrieved Employee”, have standing to serve as PAGA representatives even if they
5 did not personally experience each and every alleged violation. (*Kirby v. Reins International*
6 *California, Inc.* (2017) 18 Cal.App 5th1052, 1055.) “Aggrieved employee” is a term of art in
7 PAGA. It governs not just who has standing to bring a PAGA claim, but also who may recover a
8 share of penalties and how those penalties are calculated. Under PAGA, the recovering party is the
9 State of California as the real party in interest as represented through the “Aggrieved Employee.”

10 12. “California Labor Code contains a number of provisions designed to protect the
11 health, safety, and compensation of workers. Employers who violate these statutes may be sued by
12 employees for damages or statutory damages.” (*Kirby v. Reins* (2017) 18 Cal.App 5th1052) This
13 echoes the distinction set in *Murphy v. Kenneth Cole* between a premium wage and a statutory
14 penalty. “The remedy for a Labor Code violation, through settlement or other means, is distinct
15 from the fact of the violation itself. For example, employers can pay an additional hour of wages
16 as a remedy for failing to provide meal and rest breaks...but we have held that payment of this
17 statutory remedy does not excuse a section 226.7 violation.” (*Kirby v. Immoos Fire Protection,*
18 *Inc.* (2012) 53 Cal.4th 1244, 1256). Premium wages are a remedy to the individual but fail to
19 address the violation, i.e. the damage to the State and people. A violation gives rise to statutory
20 penalties; the parties redressed are different and the injury at the heart of the matter are different.

21 13. Following the logic of the court, payment of the statutory remedy, the premium
22 wage, to the individual does not excuse the violation, remedied through penalty payments. As
23 such, a PAGA claim can still be pursued regardless of whether the premium wage is paid or has
24 been previously settled. More importantly, payment of the statutory remedy, the premium wage, is
25 prima facie evidence of the fact that a violation exists at all. A company would not pay the
26 premium wage in the absence of a violation.

27 14. Plaintiff alleges that Defendants failed to authorize or permit her and other current
28 and former aggrieved California-based hourly non-exempt employees to take all legally required

1 and compliant rest periods due to Defendants' policies, practices, and/or procedures including, but
2 not limited to, the following:

3 (a) Requiring Plaintiff and other current and former aggrieved California-based
4 hourly non-exempt employees to remain on Defendant's premises during rest periods and,
5 therefore, exercising control over how Plaintiff and other current and former aggrieved California-
6 based hourly non-exempt employees spent their rest periods resulting in rest periods that were not
7 duty-free as required.

8 (b) Defendants knew that failing to authorize a rest period constituted a
9 violation that could be remedied through payment of a premium wage hour.

10 (c) Defendants would pay an hour premium wage for each violation to Plaintiff
11 and other current and former aggrieved California-based hourly non-exempt employees.

12 15. Defendants' payment of the premium wage did not exist in a vacuum; a violation
13 occurred giving rise to the payment. The clear language of the statute and supporting case law
14 make it clear that premium wages are distinct from PAGA penalties. Under PAGA, the violation
15 can only be remedied through payment of the statutory penalty; Defendants' liability under PAGA
16 is not extinguished by payment of the premium wage hour.

17 **FIRST CAUSE OF ACTION**

18 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

19 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

20 **(Against all Defendants)**

21 16. Plaintiff incorporates all paragraphs above as though fully set forth herein.

22 17. During the period beginning one-year period preceding the sending of the initial
23 notice to the LWDA to the present, Defendants violated Labor Code sections 226, 226.7, and the
24 applicable Wage Orders.

25 18. Specifically, Defendants have committed the following violations of California
26 Labor Code:

27 19. **Failure to pay wages to hourly non-exempt employees for workdays that**
28 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees regularly worked
2 shifts of more than three-and-a-half (3.5) hours.

3 20. California law requires every employer to authorize and permit an employee a rest
4 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
5 Code section 226.7; Wage Order 9 at §12. Under California law, “[e]mployees are entitled to 10
6 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
7 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
8 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
9 section 226.7; Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of
10 each work period. Wage Order 9 at §12. Additionally, the rest period requirement “obligates
11 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
12 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
13 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

14 21. If the employer fails to authorize or permit a required rest period, the employer
15 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
16 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
17 Wage Order 9 at § 12.

18 22. In this case, Defendants failed to authorize or permit all legally required and
19 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
20 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
21 limited to: requiring Plaintiff and other current and former aggrieved California-based hourly non-
22 exempt employees to remain on Defendant’s premises during rest periods and, therefore,
23 exercising control over how Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees spent their rest periods resulting in rest periods that were not duty-
25 free as required.

26 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
27 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
28 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each

workday they did not receive legally required and compliant rest periods, , in violation of Labor Code section 226.7.

24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and other current and former aggrieved California-based hourly non-exempt employees not receiving wages to compensate them for workdays in which Defendants did not provide them with rest periods in compliance with California law.

25. **Failure to provide complete and accurate wage statements:** Labor Code section 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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, provided, that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay 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."

26. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages earned (including rest period premium wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

27. Plaintiff further alleges that Defendants committed direct violations of Labor Code section 226 through their policies, practices, and/or procedures, including but not limited to, for example, erroneously listing Plaintiff's rest and recovery hours, which act as the log of hours owed for rest period premium, incorrectly list fractional hours such as "3.83" instead of a whole

1 hour as would be owed which would read as “4.00”. Plaintiff is informed and believes, and
2 thereon alleges, that other current and former aggrieved California-based hourly non-exempt
3 employees were also subject to Defendants’ aforementioned policies, practices, and/or procedures.

4 28. Defendants’ violations of the Wage Order constituted violations of Labor Code
5 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

6 29. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
7 employee, on behalf of himself or herself and other current or former employees, to bring a civil
8 action to recover civil penalties against all Defendants pursuant to the procedures specified in
9 Labor Code section 2699.3.

10 30. Plaintiff has complied with the procedures for bringing suit specified in Labor
11 Code section 2699.3. On November 4, 2021, Plaintiff filed notice with LWDA and provided
12 notice to Defendants by certified mail which provided notice of the specific provisions of the
13 Labor Code alleged to have been violated, including the facts and theories to support the
14 violations alleged.

15 31. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
16 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
17 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
18 parties notice within 60 days of the date of Plaintiff’s letter that the LWDA intends to investigate
19 Plaintiff’s claims.

20 32. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
21 penalties for Defendants' violations of Labor Code sections 226 and 226.7 during the Civil Penalty
22 Period in the following amounts:

23 a. For violations of Labor Code section 226.7; one hundred dollars (\$100) for
24 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
25 for each aggrieved employee per pay period for each subsequent violation [penalty amounts
26 established by Labor Code section 2699(f)(2)].

27 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
28 for each employee for each pay period for the initial violation, and for each subsequent violation,

one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

33. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: February 22, 2022

Respectfully submitted,
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