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Superior Court of CA,
County of Santa Clara
22CV400738
Reviewed By: M. Bui

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Attorneys for PLAINTIFFS
**Humberto Edel Herrera Lopez and
Ermi Leonardo Villagran**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

HUMBERTO EDEL HERRERA LOPEZ, and
ERMI LEONARDO VILLAGRAN,

Plaintiffs,

v.

WALT OXLEY ENTERPRISES, INC. DBA
CIARRA CONSTRUCTION, and DOES 1 through
25, inclusive,

Defendants.

Case Number: 22CV400738

COMPLAINT

- (1) **FAILURE TO PAY ALL WAGES**
- (2) **FAILURE TO PAY OVERTIME
COMPENSATION**
- (3) **FAILURE TO PERMIT AND PROVIDE
MEAL PERIODS**
- (4) **FAILURE TO PERMIT AND PROVIDE
REST BREAKS**
- (5) **FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS**
- (6) **WAITING TIME PENALTIES**
- (7) **PRIVATE ATTORNEY GENERAL ACT,
CAL. LAB. CODE § 2698, et seq.**
- (8) **UNFAIR COMPETITION IN VIOLATION
OF CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17200 ET. SEQ**

JURY TRIAL REQUESTED

1. Plaintiff Humberto Edel Herrera Lopez (hereinafter “PLAINTIFF HERRERA”) and Plaintiff Ermi Leonardo Villagran (hereinafter “PLAINTIFF VILLAGRAN”) (collectively “PLAINTIFFS”) hereby allege as follows:

I. JURISDICTION & VENUE

2. PLAINTIFFS bring this action against WALT OXLEY ENTERPRISES, INC. DBA CIARRA CONSTRUCTION (hereinafter “DEFENDANT WALT”), and DOES 1 through 25, inclusive (collectively “DEFENDANTS”) for compensatory damages, statutory damages, civil penalties, prejudgment interest, restitution, attorneys’ fees and costs, and other appropriate and just relief.

3. Jurisdiction is proper in this court because alleged damages exceed twenty-five thousand dollars (\$25,000.00).

4. Venue is proper in this court because DEFENDANTS' place of business is and PLAINTIFFS were employed within the County of Santa Clara.

II. PARTIES

5. PLAINTIFF HERRERA is a competent individual and former employee of DEFENDANTS.

6. PLAINTIFF VILLAGRAN is a competent individual and former employee of DEFENDANTS.

7. DEFENDANT WALT is a California corporation with its principal place of business located in San Jose, California.

8. Reference herein to “DEFENDANTS” without other limitation shall include all specifically, and fictitiously named DEFENDANTS, including DEFENDANTS who were the officers, directors, and/or managing agents of other DEFENDANTS. Whenever and wherever reference is made in this Complaint to DEFENDANTS, such reference shall include each and every specifically and fictitiously named defendant individually, jointly, and severally.

1 17. DEFENDANTS hired PLAINTIFFS as non-exempt hourly employees.

2 18. DEFENDANTS assigned PLAINTIFFS to work at different job sites in Northern
3 California.

4 19. During the CLAIM PERIOD, DEFENDANTS scheduled PLAINTIFFS to work more
5 than eight (8) hours per day.

6 20. DEFENDANTS failed to pay PLAINTIFFS overtime when they worked over eight (8)
7 hours in a day.

8 21. During the CLAIM PERIOD, DEFENDANTS scheduled PLAINTIFFS to work more
9 than forty (40) hours per week.

10 22. DEFENDANTS failed to pay PLAINTIFFS overtime when they worked over forty (40)
11 hours per week.

12 23. During the CLAIM PERIOD, PLAINTIFFS worked more than five (5) days per week.

13 24. DEFENDANTS failed to pay PLAINTIFFS for all of the hours that they worked at their
14 proper rates of pay.

15 25. During PLAINTIFFS CLAIM PERIOD, DEFENDANTS failed to pay PLAINTIFFS at the
16 legal overtime rate for time worked over twelve (12) hours per day.

17 26. During PLAINTIFFS CLAIM PERIOD, DEFENDANTS failed to pay PLAINTIFFS at the
18 legal overtime rate for time worked during their seventh consecutive day in a work week.

19 27. PLAINTIFFS performed off-the-clock work prior to the beginning of their scheduled
20 shift. DEFENDANTS had the practice of requiring PLAINTIFFS to drive to DEFENDANTS' yard to
21 prepare tools and materials, put on their protective gear, load the tools and materials onto
22 DEFENDANTS' truck, and attend meetings prior to driving to job sites. DEFENDANTS failed to
23 compensate PLAINTIFFS for these off the clock hours.

24 28. PLAINTIFFS performed off-the-clock work after the end of their scheduled shift. When
25 PLAINTIFFS shift ended at the scheduled job site, DEFENDANTS required PLAINTIFFS to drive back
26 to DEFENDANTS' yard, unload materials and tools, clean the materials and tools, clean
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1 DEFENDANTS' truck among other similar duties. DEFENDANTS failed to compensate PLAINTIFFS
2 for these off the clock hours.

3 29. DEFENDANTS failed to compensate PLAINTIFFS for the travel time from
4 DEFENDANTS' yard to the job site and from the job site to DEFENDANTS' yard.

5 30. DEFENDANTS only recorded and paid the hours that DEFENDANTS scheduled
6 PLAINTIFFS to work at the job sites. DEFENDANTS failed to compensate PLAINTIFFS for hours
7 worked outside of the number of hours that they were scheduled to work by DEFENDANTS.

8 31. DEFENDANTS had a practice of rounding the hours worked by PLAINTIFFS, which
9 resulted in unpaid hours to PLAINTIFFS.

10 32. During the CLAIM PERIOD, PLAINTIFFS worked more than five (5) hours per day,
11 which gave them the right to have an "off-duty" meal period of at least 30-minutes. PLAINTIFFS were
12 prevented from taking an uninterrupted 30-minute "off duty" meal period due to their heavy workload.

13 33. DEFENDANTS failed to provide PLAINTIFFS with a second off-duty meal period no later
14 than the end of PLAINTIFFS' tenth (10th) hour of work.

15 34. DEFENDANTS had the practice of automatically deducting thirty (30) minutes for meal
16 periods even when the meal periods were short, interrupted or not provided.

17 35. DEFENDANTS failed to compensate PLAINTIFFS with the equivalent of one (1)
18 regular hour's rate of pay for each "on-duty" meal period that DEFENDANTS caused PLAINTIFFS to
19 have, or each meal period DEFENDANTS caused PLAINTIFFS to miss.

20 36. DEFENDANTS had the practice of not providing or authorizing PLAINTIFFS to take all
21 ten (10) minutes rest periods for every four (4) hours worked or major fraction thereof.

22 37. DEFENDANTS failed to pay PLAINTIFFS the equivalent of one (1) regular hour's rate
23 of pay for rest periods that DEFENDANTS caused PLAINTIFFS not to have.

24 38. DEFENDANTS failed to issue proper, accurate itemized wage statements to
25 PLAINTIFFS. The wage statements are not accurate as they do not reflect all actual hours worked, the
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1 regular time worked, the overtime worked, and due premium for lack of or improperly provided meal
2 periods and rest periods.

3 39. DEFENDANTS willfully failed to pay all the wages due to PLAINTIFFS in the timely
4 manner required at the time that PLAINTIFFS employment ended.

5 **IV. CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**

7 *(Failure to Pay All Wages)*

8 40. PLAINTIFFS re-allege and incorporate by reference the allegations of paragraphs above.

9 41. Pursuant to the IWC 16 and Cal. Labor Code §§ 201, 202, 204, 500, 512 and 1194,
10 DEFENDANTS were required to compensate PLAINTIFFS for all hours worked.

11 42. DEFENDANTS, as alleged above, failed to compensate PLAINTIFFS for all hours
12 worked. DEFENDANTS owe PLAINTIFF wages under the terms of employment.

13 43. PLAINTIFFS request an award in the amount of unpaid wages owed to them by
14 DEFENDANTS for the four (4) years preceding the filing of this complaint, plus interest.

15 44. PLAINTIFFS request an award of reasonable attorneys' fees and costs pursuant to Cal.
16 Labor Code §§ 218.5 and 1194(a).

17 45. PLAINTIFFS request relief as described below.

18 **SECOND CAUSE OF ACTION**

19 *(Failure to Pay Overtime Compensation)*

20 46. PLAINTIFFS reallege and incorporate by reference the allegations of the above
21 paragraphs.

22 47. Pursuant to IWC 16 and Labor Code § 510, and 1194, PLAINTIFFS are owed premium
23 compensation for all overtime hours worked.

24 48. DEFENDANTS failed to pay PLAINTIFFS overtime compensation when PLAINTIFFS
25 worked more than eight (8) a day or forty (40) hours per week at the rate of one-half of the employee's
26 regular rate of pay.
27
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57. Pursuant to Labor Code § 226.7(a) and IWC 16, DEFENDANTS were required to authorize and permit PLAINTIFFS, the opportunity to take proper rest periods based upon the total hours worked, at a rate of ten (10) minutes net per four (4) hours or major fraction thereof, lasting at least ten (10) minutes.

58. DEFENDANTS failed to authorize and permit PLAINTIFFS ten (10) minutes for a proper rest period for every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7(a) and IWC (16).

59. DEFENDANTS have violated Labor Code § 226.7 and IWC 16 by failing to pay PLAINTIFFS one (1) hour of pay at PLAINTIFFS' regular rate of pay for each workday proper rest breaks were required but neither authorized nor provided properly.

60. PLAINTIFFS request relief as described below.

FIFTH CAUSE OF ACTION

(Failure to Provide Accurate/Itemized Wage Statements)

61. PLAINTIFFS reallege and incorporate by reference the allegations of the above paragraphs.

62. DEFENDANTS failed to provide PLAINTIFFS an accurate itemized statement in writing showing information, like all hours worked, all gross wages earned, all proper rates of pay, and the compensation for any meal periods and rest periods owed at the applicable hourly rates.

63. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §226(a), 226.2 and IWC 16, causing damages to PLAINTIFFS. These damages, including but not limited to costs expended calculating their true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, PLAINTIFFS elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in subsequent pay periods pursuant to Labor Code §226(e), up to the statutory maximum amount of four thousand dollars (\$4,000.00), plus reasonable attorneys' fees and costs.

1 **SIXTH CAUSE OF ACTION**

2 *(Labor code §§ 201-203 - Waiting Time Penalties)*

3 64. PLAINTIFFS reallege and incorporate by reference the allegations of the above
4 paragraphs.
5

6 65. California Labor Code § 201 requires an employer who discharges and employee to pay
7 all compensation due to that employee immediately upon discharge.

8 66. California Labor Code § 202 requires an employer to pay all compensation due to
9 employees who quit within 72 hours of the employee quitting, unless the employee provided at least 72
10 hours of notice of resignation, in which case all compensation is due at the end of the employee's final
11 day of work.
12

13 67. Labor Code § 203 provides that if an employer willfully fails to pay compensation as
14 required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of
15 continued compensation of up to 30 work days.
16

17 68. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
18 including unpaid wages, and overtime compensation to PLAINTIFFS at the end of their employment.
19 As a result, DEFENDANTS are liable to PLAINTIFFS for waiting time penalties,
20 together with interest thereon, under Labor Code § 203.
21

22 **SEVENTH CAUSE OF ACTION**

23 *(Civil Penalties Pursuant to Private Attorney General Act)*

24 *(Labor Code §§ 2698, et seq.)*
25

26 69. PLAINTIFFS reallege and incorporate by reference the allegations of paragraphs above.

27 70. Pursuant to the PAGA, the foregoing violations of statutes and regulations permit
28 PLAINTIFFS to recover civil penalties through this class action. The PAGA imposes a civil penalty of

1 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
2 hundred (\$200) per pay period per aggrieved employee for subsequent violations for all Labor Code
3 provisions for which a civil penalty is not specifically provided.

4 71. DEFENDANTS' violations of California wage and hour laws enable PLAINTIFFS to
5 recover civil penalties as aggrieved employees on behalf of themselves and other current and former
6 employees of DEFENDANTS.

7 72. PLAINTIFFS have complied with the procedural requirements specified in Labor Code
8 §2699.3. PLAINTIFFS have therefore exhausted all administrative procedures required under Labor
9 Code §§2698, 2699 and 2699.3, and is justified as a matter of right in bringing forward this cause of
10 action.
11

12 73. On November 3, 2021, PLAINTIFFS, through counsel, pursuant to the PAGA, sent via
13 certified mail a letter-notice of violations to the LWDA, as required by Labor Code §2699.3. A copy of
14 this letter-notice is attached to this complaint as Exhibit "A."

15 74. Sixty-five (65) calendar days have passed since the postmark date of PLAINTIFFS' notices
16 and the LWDA has not notified PLAINTIFFS' counsel that it does not intend to investigate the
17 allegations. Pursuant to Labor Code §2699.3 (a)(2)(A), PLAINTIFFS may commence a civil action
18 pursuant to Labor Code §2699.

19 75. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code,
20 PLAINTIFFS seek all civil penalties, reasonable attorney's fees and costs available pursuant to Labor
21 Code §2699.

22 76. PLAINTIFFS are likely to have evidentiary support, after research and reasonable
23 opportunity for further investigation and discovery, to further prove penalties and violations.
24 PLAINTIFFS will amend this complaint if appropriate and required to seek all applicable penalties for
25 violations which the LWDA has failed to investigate and/or failed to issue a citation for.
26

27 77. Pursuant to Labor Code §2699(i), PLAINTIFFS, as aggrieved employees on behalf of
28 themselves and other current and former employees of DEFENDANTS, should be awarded twenty-five

1 percent (25%) of all penalties due under California law, interest, attorneys' fees and costs. The LWDA
2 should be awarded seventy-five percent (75%) of the penalties due and awarded.

3 **EIGHTH CAUSE OF ACTION**

4 *(Unfair Competition in Violation of California Business and Professions Code §§ 17200 et. seq.)*

5 78. PLAINTIFFS reallege and incorporate by reference the allegations of the above
6 paragraphs.

7 79. California Business and Professions Code ("Cal Bus & Prof Code") §§ 17200 et. seq.
8 prohibits acts of unfair competition, which shall mean and include any "unlawful and unfair business
9 practices."
10

11 80. The conduct of DEFENDANTS has been and continues to be unfair, unlawful, and
12 deleterious to PLAINTIFFS, and to the public. PLAINTIFFS are "individuals" within the meaning of
13 Cal Bus & Prof Code §17204, and therefore has standing to bring this suit for restitution.

14 81. The prompt and proper payment of wages is a fundamental public policy of the State of
15 California.

16 82. It is also the public policy of the State to enforce minimum labor standards, to ensure that
17 employees are not required or permitted to work under substandard and unlawful conditions, and to
18 protect those employers who comply with the law from losing competitive advantage to other employers
19 who fail to comply with labor standards and requirements.

20 83. Through the conduct alleged herein, DEFENDANTS acted contrary to these public
21 policies and have thus engaged in unlawful and/or unfair business practices in violation of Cal Bus &
22 Prof Code §§17200 et. seq., depriving PLAINTIFFS, and other employees working for DEFENDANTS
23 the rights, benefits, and privileges guaranteed to employees under California law.

24 84. DEFENDANTS regularly and routinely violated the following statutes and regulations
25 with respect to PLAINTIFFS and other employees of DEFENDANTS:

- 26 • IWC 16, and Labor Code §§ 201, 202, 203, 204, 500, and 1194 (failure to pay all hours
27 worked);
28

- IWC 16, and Labor Code §§ 510, 558, and 1194 (failure to pay overtime rate pay);
- IWC 16, and Labor Code § 226.7 (failure to provide rest breaks);
- IWC 16, and Labor Code §§ 226.7, 512 (failure to provide meal periods);
- Labor Code § 226 (failing to provide accurate wage statements to employees at the time of payment); and
- Labor Code § 203 (failing to pay all wages owed at the end of employment).

85. By engaging in these unfair and unlawful business practices within the meaning of Business and Professions Code §§ 17202 et. eq., DEFENDANTS have harmed PLAINTIFFS, other employees working for DEFENDANTS, and the general public, for which DEFENDANTS have gained an unfair competitive edge (by paying less and making less effort).

86. Under Cal Bus & Prof Code § 17203, PLAINTIFFS are entitled to obtain restitution of these funds on behalf of other employees working for DEFENDANTS who are similarly affected by DEFENDANTS' unfair and/or unlawful business practices as set forth herein.

87. Pursuant to Cal Bus & Prof Code § 17202, PLAINTIFFS are entitled to specific relief enforcing the penalty provisions of various Cal Lab Code sections in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of DEFENDANTS and would promote unfair competition.

V. PRAYERS FOR RELIEF

WHEREFORE, PLAINTIFFS respectfully pray that this Court enter judgment in their favor and against DEFENDANTS, as follows:

1. Compensatory, consequential and statutory (including unpaid wages and wage loss) according to proof;
2. Statutory damages according to proof;
3. Punitive damages according to proof;

4. Prejudgment interest pursuant to Labor Code §218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
5. Compensation of additional one (1) hour at PLAINTIFFS' regular rate of pay for each workday meal periods and rest breaks were not provided;
6. Attorneys' fees and costs made payable to Liberation Law Group, P.C., pursuant to Labor Code §§ 218.5, 1194(a) and other applicable laws;
7. Pursuant to Labor Code §§ 202 and 204, waiting times penalties in an amount equal to the wages unlawfully unpaid and interest thereon be paid;
8. Pursuant to Labor Code §1194.2(a), liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon be paid;
9. An award of twenty-five percent (25%) of all penalties due under California law, interest, attorneys' fees and costs to PLAINTIFFS as an aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS, pursuant to Labor Code §2699(i) and an award of seventy-five percent (75%) of the penalties in favor of the LWDA.
10. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained by DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof; and
11. Such other and further relief as the Court deems just and proper.

Dated: July 1, 2022

LIBERATION LAW GROUP, P.C.

By: 
Sandra Beltran
Attorneys for PLAINTIFFS

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VI. JURY REQUEST

PLAINTIFFS request a trial by jury.

Dated: July 1, 2022

LIBERATION LAW GROUP, P.C.

By: _____



Sandra Beltran

Attorneys for PLAINTIFFS

EXHIBIT A

Attorneys:

Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Jonathan Rebong
Nick Aguilar, Adm. in Fla.
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**Legal Team:**

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Jordan Cada

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

November 3, 2021

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail

Walt Oxley
Agent for Service of Process
Walt Oxley Enterprises, Inc.
1416 Cherrydale Drive
San Jose, CA 95125

Re: Humberto Edel Herrera Lopez and Ermi Leobardo Villagan, on behalf of themselves and all similarly aggrieved Walt Oxley Enterprises, Inc. employees in California, as individuals and proposed Representatives of the State of California

Dear PAGA Administrator:

Mr. Humberto Edel Herrera Lopez ("Plaintiff Herrera") and Mr. Ermi Leobardo Villagan ("Plaintiff Villagan") (collectively "Plaintiffs") submit this notice of Labor Code and Industrial Welfare Commission Wage Order violations committed by Walt Oxley Enterprises, Inc. ("Defendant"). Plaintiffs seek to represent themselves and other similarly aggrieved employees of Defendant in a Private Attorneys General Act ("PAGA") action against Defendant. [Labor Code §§ 2698, *et seq.*] For purpose of this notice, "similarly aggrieved employees" includes all of Defendant's current and former non-exempt employees in California.

I. Factual Statement

On or about September 1, 2016, Plaintiff Herrera was hired by Defendant as a carpenter. Plaintiff Herrera's last position was a foreman. Plaintiff Herrera worked for Defendant until on or about June 1, 2021.

In or around August 2019, Plaintiff Villagan was hired by Defendant as a carpenter. Plaintiff Villagan worked for Defendant until on or about July 31, 2021.

Plaintiffs were hired by Defendant as a non-exempt hourly employee.

During their employment, Plaintiffs and similarly aggrieved employees regularly

worked five (5) to six (6) days per week for Defendant. Plaintiffs and similarly aggrieved employees were assigned to work at job sites assigned by Defendant.

During their employment, Plaintiffs and similarly aggrieved employees were regularly scheduled to work shifts of eight (8) or more hours per day, or forty (40) or more hours per week.

A. Labor Code §§ 510, 1194 and Wage Order 16 (Unpaid Wages, Unpaid Overtime, Off-the-Clock, Improper Rounding)

Labor Code sections 510 and 1194, and Industrial Welfare Commission Wage Order (“Wage Order”) 16 require employers to pay at least minimum wages for all hours worked and overtime wages for hours worked over eight (8) hours per day or forty (40) hours per week. Here, Defendant failed to properly compensate Plaintiffs and similarly aggrieved employees for all hours worked and at their regular and overtime rates of pay. Defendant failed to pay Plaintiffs and similarly aggrieved employees at least the minimum wage for off-the-clock hours worked.

Defendant had a policy and practice of not paying Plaintiffs and similarly aggrieved employees for off-the-clock hours worked before and after their scheduled shift.

Plaintiffs and similarly aggrieved employees performed off-the-clock hours worked at the beginning of their shift. Defendant had a policy and practice of requiring Plaintiffs and similarly aggrieved employees to drive to Defendant’s yard to prepare tools and materials, put on their protective gear, load the tools and materials onto Defendant’s truck, and attend meetings prior to driving to job sites. Defendant did not compensate Plaintiffs and similarly aggrieved employees for these off the clock hours.

Plaintiffs and similarly aggrieved employees performed off-the-clock hours worked at the end of their shift. When Plaintiffs and similarly aggrieved employees finished their shift, Defendant required them to drive back to Defendant’s yard to unload materials and tools, clean the materials and tools, clean Defendant’s truck and similar duties. Defendant did not compensate Plaintiffs and similarly aggrieved employees for these off the clock hours.

Defendant failed to compensate Plaintiffs and similarly aggrieved employees for the travel time from Defendant’s yard to the job site and from the job site to Defendant’s yard.

Defendant had a policy and practice of filling out time sheets to record the worked hours of Plaintiffs and similarly aggrieved employees. Defendant only recorded and paid the hours of Plaintiffs and similarly aggrieved employees worked at job sites as scheduled by Defendant. However, many times, Plaintiffs and similarly aggrieved employees worked after the assigned scheduled shift hours. Defendant failed to compensate Plaintiffs and similarly aggrieved employees for time worked after their scheduled shift at the job site.

Defendant had a policy and practice of rounding the hours worked by Plaintiffs and similarly aggrieved employees in one hour increments. Defendant's rounding policy was not fairly and neutrally applied, which resulted in the underpayment of hours worked by Plaintiff and similarly aggrieved employees.

Defendant had a policy and practice of automatically deducting thirty (30) minutes for meal breaks from the hours worked by Plaintiffs and similarly aggrieved employees. However, the meal periods of Plaintiff and similarly aggrieved employees were "on duty" as Defendants required them to always have their communication devices on including during their meal breaks. As a result, the meal periods of Plaintiff and similarly aggrieved employees were not free from the control of Defendant and are considered as time worked. Defendant failed to properly compensate Plaintiffs and similarly aggrieved employees for hours worked and time spent under Defendant's control during the automatically deducted thirty (30) minute period.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 1197.1, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 226.7, 512 and Wage Order 16 (Meal and Rest Periods and Premium Wages)

Defendants must authorize and permit employees "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours." [*Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004,1029 (2012)].

Defendants are also required to provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." [*Id.* at 1049]. If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). [Labor Code § 226.7; Wage Order 9].

Here, Defendant failed to provide, authorize, and permit Plaintiffs and similarly aggrieved employees with proper meal and rest periods due to its policy of requiring Plaintiff and similarly aggrieved employees to have their communication device, on at all times, including during their meal and rest breaks. As a result, the meal and rest breaks of Plaintiffs and similarly aggrieved employees were "on duty" meal and rest breaks as the breaks of Plaintiffs and similarly aggrieved employees were not free from the control of the employer.

Defendant had a policy and practice of providing Plaintiffs and similarly aggrieved employees only one break of an hour regardless of the number of hours worked by Plaintiffs and similarly aggrieved employees. As a result, Plaintiffs and similarly aggrieved employees were not provided with a second meal period when they worked ten or more hours in one shift. Plaintiffs and similarly aggrieved employees were not provided a second or third rest break as required by Wage Order 16.

Defendant did not have a policy and practice of compensating Plaintiffs and similarly aggrieved employees with premium wages when proper meal and rest breaks were not provided to them.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, “total hours worked by the employee” 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)(2)(9)]. Here, Defendant failed to provide Plaintiffs and similarly aggrieved employees with accurate itemized wage statements that noted all actual hours worked and accurate rates of pay. Additionally, Defendant failed to provide Plaintiffs and similarly aggrieved employees with accurate itemize wage statements that noted premium wages due for meal and rest break violations.

Defendant has violated the following civil penalty provisions: Labor Code Sections 226.3 and 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. [Cal. 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. [Cal. Labor Code § 203]. As a result of its failure to pay all wages earned, Defendant failed to pay all final wages due to Plaintiffs and other separated similarly aggrieved employees, and has violated Sections 201-203.

Defendant has violated the following civil penalty provisions: Labor Code Section 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code § 1174 and Wage Order 16 (Payroll Records)

Labor Code section 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee.” An employer may be liable under Section 1174 if it fails to record when employees report to work, the start and end time of their shifts, and the total hours worked or meal periods. [See Carrillo v. Schneider Logistics, L.P., 823 F. Supp.2d 1040, 1044 (2011)]. Wage Order 16, Section 6, requires employers to keep accurate information regarding employee shift beginning and end times, meal periods, total daily hours worked, total hours worked during the pay period and applicable rates of pay, and total wages paid each pay period, among other items. Because Defendant’s policies forced Plaintiffs and similarly aggrieved employees to work off-the-clock, Defendant did not keep the required records showing hours worked. Defendant

failed to keep proper timekeeping records and failed to provide Plaintiff and similarly aggrieved employees with accurate accounting of actual hours worked, with corresponding wage rates.

Defendant has violated the following civil penalty provisions: Labor Code Sections 1174.5, 2699(f) and Wage Order 16, Section 18. Please note that other civil penalty provisions may additionally apply.

Very truly yours,
LIBERATION LAW GROUP, P.C.



Arlo Garcia Uriarte