

MATTHEW GUTIERREZ, SBN 271206
 mg@gutierrezderham.com
 GUTIERREZ DERHAM LAW FIRM LLP
 6077 Coffee Road, Suite 4
 Bakersfield, CA 93308
 Telephone: (323) 676-6676

Attorneys for Plaintiff, STEPHANIE ROMERO

FILED
 Superior Court of California
 County of Los Angeles

09/21/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Marquez Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

[UNLIMITED CIVIL]

STEPHANIE ROMERO, an individual,

Plaintiff,

vs.

ALTA PUBLIC SCHOOLS, a corporation; and
 DOES 1 through 5, inclusive,

Defendants.

Case No.: 22STCV22420

*Assigned for All Purposes to the Honorable
 Michael P. Linfield in Dept. 34*

FIRST AMENDED COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 2. Unpaid Wages and Failure to Pay Minimum Wages**
- 3. Failure to Provide Rest Periods or Compensation in Lieu Thereof in Violation of Labor Code § 226.7**
- 4. Failure to Provide Accurate Itemized Wage Statements**
- 5. Labor Code § 203 Waiting Time Penalty**
- 6. Violation of Unfair Competition Law**
- 7. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff, STEPHANIE ROMERO, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

4. Defendant ALTA PUBLIC SCHOOLS ("ALTA") is a corporation that conducted, and is conducting, business in the State of California. ALTA registered the address 2410 Broadway, Walnut Park, CA 90255 with the California Secretary of State as its principal place of business in California.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.

Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant.

6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil wrongs as alleged in this Complaint.

7. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

8. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

11. Defendant employed Plaintiff from October 2018 to July 15, 2021, as a non-exempt employee. During Plaintiff's employment, she worked field trips after regular business hours. At such times, Defendant would require Plaintiff to clock out at the eighth hour and continue to work, then come in later the next business day (to avoid the company paying overtime compensation rate). She would work from home on weekends and respond to emails even though she was not on the clock because she was told to by her supervisor.

12. Defendants regularly required Plaintiff to work without being provided the opportunity to have an uninterrupted rest break. Defendants regularly did not allow her the opportunity to be relieved of Plaintiff's duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with rest breaks.

22 13. Defendant did not issue itemized wage statements showing the accurate: gross wages
23 earned; total hours worked; and the corresponding number of hours worked at each hourly rate by the
24 employee.

25 14. Defendant did not issue Plaintiff all her final wages due upon termination.

26 |||

27 |||

28 |||

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

15. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

16. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

17. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Lab. Code § 510(a).

18. On certain occasions, Plaintiff worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

19. Any "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation." Lab. Code § 558.1(a).

20. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

21. Plaintiff has been damaged in an amount equal to the compensation to which she was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

22. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

23. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

SECOND CAUSE OF ACTION

UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

24. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

25. "Wages" includes all amounts for labor performed by employees of every description, including commission basis. Lab. Code § 200(a). 64. "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." Lab. Code § 204(a). 65. "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . . , including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194(a).

26. On certain occasions, Defendants failed to pay Plaintiff's wages for the off the clock work. As a result, Defendants failed to pay Plaintiff the legal minimum wage.

27. Plaintiff has been harmed by Defendants' failure to minimum wages due in an amount according to proof at trial.

28. An employee receiving less than the legal minimum wage or legal overtime compensation "is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." Lab. Code § 1194.

29. An employee receiving less than the minimum wage set by an IWC order "shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon." Lab. Code § 1194.2.

30. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due, liquidated damages, interest, and attorneys' fees. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a).

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7

(AGAINST ALL DEFENDANTS AND DOES 1-5)

31. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

32. California Labor Code section 226.7 provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health." Lab. Code § 226.7(b).

33. "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Lab. Code § 226.7(c).

34. Relevant Wage Orders of the Industrial Welfare Commission ("IWC"), applicable to Defendant, such as Wage Order No. 4-2001 section 12, provide that "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

35. Defendants regularly required Plaintiff to work without being provided the opportunity to have an uninterrupted rest break. Defendants regularly did not allow her the opportunity to be relieved of Plaintiff's duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with rest breaks.

36. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional hour of pay at Plaintiff's regular rate of compensation for each workday that the meal period was not provided, and one additional hour of pay for each workday that the rest period was not provided pursuant to *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

37. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a).

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

38. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

39. California Labor Code section 226(a) provides that every employer shall, at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing accurate: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of

Section 1682, the name and address of the legal entity that secured the services of 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. . .” A copy of the itemized statement shall be kept on file by the employer for at least three years. Lab. Code § 226(a). A “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by Labor Code Section 226(a). Lab. Code § 226(a).

40. Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate information required by Labor Code section 226(a).

41. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

42. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing the accurate gross wages earned and total hours worked, and the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or total hours worked. Lab. Code § 226(e)(2)(B)(i).

43. As a result of the knowing and intentional failure to provide wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendants are liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

44. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

45. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

///

FIFTH CAUSE OF ACTION
LABOR CODE § 203 PENALTY
(AGAINST ALL DEFENDANTS AND DOES 1-5)

46. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

47. Defendant failed to timely pay Plaintiff all of her owed wages on her last date of work, in violation of Cal. Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of California Labor Code § 203.

48. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, attorney's fees and costs.

SIXTH CAUSE OF ACTION
VIOLATION OF UNFAIR COMPETITION LAW
(AGAINST ALL DEFENDANTS AND DOES 1-5)

49. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

50. Defendant's conduct, as alleged in this Complaint, has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's competitors. Defendant's activities as alleged herein are violations of California law and constitute unlawful business acts and practices in violation of California's Unfair Competition Law ("UCL") Business and Professions Code Section 17200 et seq.

51. A violation of Business and Professions Code Section 17200 et seq. may be predicated on the violation of any state or federal law including violations of the Labor Code. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000). Business and Professions Code Section 17200 et seq. defines unfair competition to include any unlawful, unfair or fraudulent business act or practice.

52. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Lab. Code § 510(a).

53. During Plaintiff's employment, she sometimes worked more than eight hours per workday and more than 40 hours per workweek, as alleged above, and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code section 510.

54. As a result of the herein described violations of law, Defendant unlawfully gained an unfair advantage over other businesses. As a result of the herein described violations of law, Defendant has unjustly enriched itself at the expense of Plaintiff and the general public. Such conduct by Defendant constitutes unfair competition and unfair business practices, as such terms are described in Business and Professions Code section 17200, et seq.

55. Plaintiff is informed, believe and thereon allege that Defendant has continued and still threaten to, unless restrained and ordered to disgorge all profits derived from said unfair business practices as restitution to Plaintiff, violate the Unfair Competition Law by engaging in business practices violative of California law as detailed hereinabove.

56. Plaintiff and others have been personally injured and continue to be injured by Defendant's unlawful business acts and practices as alleged herein, including, but not limited to, the loss of money and/or property at a sum according to proof at trial.

57. Pursuant to Business and Professions Code § 17203, the court is authorized to make such orders or judgments as may be necessary to prevent the use or employment by any such person or entity of any such practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property which may have been acquired by means of such unfair competition.

58. 42. Pursuant to Business and Professions Code Section 17200 et seq., Plaintiff is entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendant, for the period commencing from four years preceding the filing of the Complaint.

59. "Unless otherwise expressly provided, the remedies or penalties provided by [Business and Professions Code Section 17200 et seq.] are cumulative to each other and to the remedies or penalties available under all other laws of [California]."

///

SEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS AND DOES 1-5)

60. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

61. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

62. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

63. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from July 15, 2021, to present and ongoing.

Labor Code Violations §§ 226.7, 226, 510, 204, 1198, 1174(d), 558, 210, 226.3, 1174.5, 201, 202, 203
§ 226.7

64. “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Lab. Code § 226.7(b). “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Lab. Code § 226.7(c).

65. Relevant Wage Orders of the Industrial Welfare Commission, applicable to Defendants, such as Wage Order No. 4-2001 section 12 for example, provide that “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

66. As a company-wide practice, Defendant regularly required Plaintiff and its other non-exempt employees to work without being provided the opportunity to have a rest break. As a company-wide practice, Defendant did not allow them the opportunity to be relieved of all duties to take a rest break. As a company-wide practice, Defendant did not compensate them in lieu of providing rest breaks. As such, Defendant violated California Labor Code section 226.7(b) and 226(c).

67. California Labor Code section 226.7 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil

1 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
2 aggrieved employee per pay period for each subsequent violation.

3 **§ 226**

4 68. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
5 or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,
6 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
7 showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
8 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
9 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
10 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
11 which the employee is paid, (7) the name of the employee and only the last four digits of his or her social
12 security number or an employee identification number other than a social security number, (8) the name
13 and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during
14 the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab.
15 Code § 226(a).

16 69. Due to Defendant’s failure to account for the time worked including owed rest break
17 premiums, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate
18 total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net
20 wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed
21 to keep itemized wage statement records of the foregoing.

22 70. Labor Code Section 226 does not provide for its own self-contained “civil” penalty within
23 the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each
24 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay
25 period for each subsequent violation.

26 **§ 510**

27 71. “Any work in excess of eight hours in one workday and any work in excess of 40 hours
28 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek

1 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee.” Lab. Code § 510(a).

3 72. Plaintiff and her co-workers occasionally worked more than eight hours per workday.
4 They were not compensated with premium overtime pay for those overtime hours worked more than
5 eight per day. As such, Defendants violated Labor Code § 510.

6 73. California Labor Code section 510 does not provide for its own self-contained “civil
7 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
8 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
9 aggrieved employee per pay period for each subsequent violation.

10 **§ 204**

11 74. Labor Code Section 204(a) provides that “All wages, other than those mentioned in
12 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable
13 twice during each calendar month, on days designated in advance by the employer as the regular
14 paydays.”

15 75. Plaintiff and her co-workers occasionally worked more than eight hours per workday.
16 They were not compensated with the earned premium overtime pay for those overtime hours worked
17 more than eight per day. As such, Defendants violated Labor Code Section 204(a) by failing to pay for
18 all the overtime premium wages on regular paydays. Labor Code Section 204 does not provide for its
19 own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to
20 provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and
21 \$200 for each aggrieved employee per pay period for each subsequent violation.

22 **§ 1198**

23 76. California Labor Code section 1198 provides that the maximum hours of work and the
24 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
25 standard conditions of labor for employees. California Labor Code section 1173 defines commission as
26 the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or
27 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

77. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period. As set forth above, Plaintiff and her co-workers occasionally worked more than eight hours per workday. They were not compensated with the earned premium overtime pay for those overtime hours worked more than eight per day. Relevant Wage Orders of the IWC, applicable to Defendants, such as Wage Order No. 4- 2001 section 12, provide that “Every employer shall authorize and permit all employees to take rest periods, which in so far as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

78. As set forth above, on numerous occasions, Defendants did not permit Plaintiff and other aggrieved employees to have uninterrupted rest breaks with the opportunity to be relieved of all duties for rest breaks.

79. Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

80. California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil

penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 1174(d)

81. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

82. Defendants failed to maintain records showing the actual and accurate hours worked by Plaintiff and Plaintiff's co-workers, aggrieved employees, in violation of Labor Code Section 1174(d). Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

§ 558

83. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [Labor Code sections 510] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in a PAGA action as follows:

(1) For any initial violation, fifty 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 . . .

84. As discussed above, Defendants violated Labor Code section 510 and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

§ 226.3

85. "Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation

and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

§ 1174.5

86. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties.

§ 1174.5

87. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by the aggrieved employees. Thus, Defendants are subject to civil penalties.

§ 201-203

88. Due to the overtime and rest break violations, Plaintiff did not timely receive all of her final pay within the required timeframe from her discharge date. Thus, Defendant violated Labor Code sections 201-203. Defendant also did this to other aggrieved employees. Labor Code Sections 201-203 do not provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

Exhaustion of Administrative Remedies

64. On July 15, 2022, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of

the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-895574-22. The notice was sent by certified mail on or about July 14, 2022, to Xavier Reyes, CEO, (7021 1970 0000 0044 0638). Plaintiff submitted a fee waiver to the LWDA.

65. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For compensatory general damages, in an amount according to proof at the time of trial.
4. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
5. For restitution, in an amount according to proof at the time of trial.
6. For statutory penalties pursuant to the California Labor Code.
7. For liquidated damages pursuant to the California Labor Code.
8. For reasonable attorneys' fees pursuant to the California Labor Code.
9. For such other and further relief as the Court may deem proper.
10. For prejudgment interest.
11. For costs of suit including expert witness fees.
12. For such other equitable and further relief as the Court may deem proper.

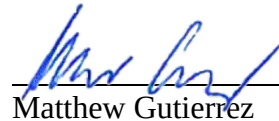
DEMAND FOR JURY TRIAL

Plaintiff, STEPHANIE ROMERO hereby demands a trial by jury.

Dated: September 19, 2022

GUTIERREZ DERHAM LAW FIRM LLP

By: _____



Matthew Gutierrez
Attorneys for Plaintiff, STEPHANIE
ROMERO