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Per local Rule, This case is assigned to
Judge Treat, Charles S, for all purposes.

SUMMONS ISSUED

Attorneys for Plaintiff KIERRA RUSSO, as representative of the State of California and the
Labor and Workforce Development Agency, and on behalf of herself and other current and former
employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

KIERRA RUSSO, on behalf of herself and all
other aggrieved employees,

Plaintiff,

v.

MARKSTEIN SALES COMPANY., a
California Corporation; LAURA
MARKSTEIN, an individual; and DOES 1- 50,
Inclusive,

Defendants,

Case No. C23-00119

COMPLAINT

**1. Civil Penalties under the Private
Attorneys General Act (PAGA), Labor
Code § 2698, et seq.**

1 Plaintiff, KIERRA RUSSO (“Plaintiff”), as a representative of the State of California and
2 the Labor and Workforce Development Agency (LWDA), and on behalf of herself and other
3 current or former aggrieved employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
7 civil penalties for Defendants’ Labor Code violations.

8 2. Defendants and Employers, MARKSTEIN SALES COMPANY and LAURA
9 MARKSTEIN (collectively referred to as “Defendants”) violated numerous wage and hour laws
10 with respect to Plaintiff and other aggrieved employees by failing to provide, for example:
11 accurate and itemized wages statements, payment for all hours worked (including regular wages
12 and overtime), failure to provide a minimum wage lawful meal periods, lawful rest periods,
13 timely payment during employment, failure to reimburse for expenses incurred during the course
14 and scope of employment, and payment upon separation of employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff KIERRA RUSSO (“Plaintiff” or “RUSSO”) is, and at all times mentioned
18 herein, was a resident of the County of Sacramento in the State of California.

19 4. Similarly aggrieved, former and/or current employees are those non-exempt
20 workers employed by Defendants during the relevant time period who were subject to the same
21 wage and hour policies and practices as Plaintiff, and thereby, suffered similar or substantially
22 similar violations (hereinafter “Aggrieved Employees”).

23 **The Defendants**

24 5. Defendant MARKSTEIN SALES COMPANY is a California corporation which,
25 at all relevant times mentioned herein, existing, doing business and employing individuals in the
26 County of Contra Costa, State of California. Plaintiff is informed and thereon alleges that
27 Defendants exercised control over Plaintiff and Aggrieved Employees’ wages, hours, and
28 working conditions.

1 6. Defendant LAURA MARKSTEIN (“MARKSTEIN”) is an individual over the age
2 of 18 years, and based on information and belief, was residing at all times mentioned herein in
3 the County of Contra Costa, State of California.

4 7. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants, and each of them, exercised control over Plaintiff and Aggrieved Employees’
6 wages, hours, or working conditions.

7 8. The true names and capacities, whether individual, corporate, associate, or
8 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
9 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
10 amend this Complaint to insert the true names and capacities of said Defendants when the same
11 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
12 the fictitiously named Defendants are responsible for the wrongful acts alleged herein and are
13 therefore liable to Plaintiff as alleged hereinafter.

14 9. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
15 of them, including those Defendants named DOES 1-50, acted in concert with one another to
16 commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced
17 one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further
18 informed and believes, and thereon alleges, that the Defendants, and each of them, including
19 those Defendants named as DOES 1-50, formed and executed a conspiracy or common plan
20 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
21 herein done as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff
22 harm.
23

24 **JURISDICTION AND VENUE**

25 10. Venue is proper in Contra Costa County, because Defendants maintains its
26 locations and transacts business in this county, the obligations and liability primarily arise in this
27 county, and work was primarily performed by Plaintiff and other aggrieved employees in this
28 county.

1 11. The California Superior Court has jurisdiction over this matter. The individual
2 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
3 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
4 amount required for diversity removal. Further, there is no federal question at issue as the issues
5 herein are based solely on California statutes and law, including, but not limited to, the California
6 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
7 and California Rules of Court.

8
9 **GENERAL ALLEGATIONS**

10 12. Defendants, a supplying company, employed Plaintiff and aggrieved employees,
11 in non-exempt positions, in California during the relevant PAGA period. Plaintiff began working
12 from approximately November 15, 2014, until her last date of employment of approximately May
13 19, 2022, as a Recon Clerk.

14 13. The position required Plaintiff to work more than 8 hours a day and/or 40 hours
15 per week without lawful compensation. Plaintiff and nonexempt aggrieved employees were
16 regularly not paid for minimum wages and overtime for compensable work time spent under the
17 control of Defendants, but which was performed off-the-clock, even though such additional work
18 time was in excess of regularly scheduled, eight-hour daily shifts. On some weeks, Plaintiff and
19 aggrieved employees were scheduled to work 7 days a week without proper compensation.

20 14. Plaintiff and nonexempt aggrieved employees were subject to not having all their
21 compensable work time recorded. Not all of Plaintiff and nonexempt aggrieved employees'
22 compensable work time spent under the control of Defendants was accounted for and
23 compensated. Specifically, Defendants (1) adjusted clock in and clock out times to the
24 disadvantage of Plaintiff and other non-exempt aggrieved employees by rounding up clock-in
25 times when Plaintiff and non-exempt employees clocked in before the scheduled start of their
26 respective shifts and rounded down clock-out times when Plaintiff and nonexempt aggrieved
27 employees worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff
28 and non-exempt employees to continue working when ostensibly on duty-free meal periods, or

1 requiring them to return to work before the end of their thirty-minute meal periods but prohibiting
2 them from clocking back in until the legally required thirty-minute mark.

3 15. Based on information and belief, Plaintiff believes all non-exempt employees
4 were also not being reimbursed for all necessary expenses incurred in the performance of their
5 job duties. Specifically, Defendants required Plaintiff and aggrieved employees, regardless of
6 classification, to use their personal cellular telephones to communicate with colleagues and
7 supervisors in the course of performing their respective duties but failed to reimburse them for
8 use of the personal cellular devices nor the consumption of personal calling or data plans.

9 16. Defendants failed to authorize and permit all required meal and rest periods for
10 Plaintiff and nonexempt aggrieved employees because, upon information and belief, Defendants
11 maintained unlawful meal/rest period policies and practices. In order to curtail labor costs,
12 Defendants regularly did not staff enough employees to provide sufficient coverage to maintain
13 their business operations so Plaintiff and aggrieved employees could not both complete their
14 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
15 Defendants prioritized completion of daily duties ahead of meal and rest period compliance.
16 Furthermore, Defendants nevertheless deducted a half hour from the daily time worked by
17 Plaintiff and aggrieved employers for ostensible meal periods despite the fact such breaks not
18 actually taken or delayed or interrupted. Moreover, Defendants failed to provide Plaintiff and
19 aggrieved employees with an additional hour of premium pay at the regular rate of pay for each
20 meal/rest period violation, as required by Labor Code section 226.7.

21 17. As a result of the violations described above, Plaintiff and nonexempt aggrieved
22 employees experienced collateral or derivative violations. Specifically, Defendants failed to
23 provide Plaintiff and nonexempt Aggrieved Employees accurate itemized wage statements in
24 writing in compliance with Labor Code section 226 and failed to compensate Plaintiff and other
25 former nonexempt aggrieved employees for all wages owed at the time employment with
26 Defendants had ended.
27

28 18. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor

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

6 19. For all provisions of the Labor Code except those for which a civil penalty is
7 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
8 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
9 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
10 for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

11 20. Defendants' conduct during the PAGA period with respect to Plaintiff and the
12 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

13 21. Plaintiff alleges that Defendants has engaged in a systematic pattern of wage and
14 hour violations under the California Labor Code and IWC Wage Orders.

15 22. At all relevant times herein, Defendants employed Plaintiff and other aggrieved
16 employees as employees who were subject to the employment policies, in whole or in part, and
17 therefore suffered the same or substantially similar violations, in whole or in part.

18 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
20 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
21 and that they were not receiving all wages earned for work that was required to be performed. In
22 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
23 aggrieved employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
24 aggrieved employees all earned minimum, regular, and/or overtime compensation.

25 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
27 required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
28

employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing timely meal periods. Defendants failed to pay an additional hour of pay to Plaintiff and aggrieved employees for late meal periods. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive all required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice, and policy of not providing timely rest periods. Defendants failed to pay an additional hour of pay to Plaintiff and aggrieved employees for each rest periods were not provided or was interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved employees did not receive all required rest periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted 10 minute off-duty rest period.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and certain aggrieved employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and certain aggrieved employees did not receive payment of all wages due, within permissible time periods, upon separation of employment.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage statements that accurately showed their actual hours worked, total hours worked, number of hours worked at each hourly rate, gross and net wages earned, and correct employer

1 information in accordance with California law. As a result of the wage violations specified
2 above, and in violation of the Labor Code, Plaintiff and aggrieved employees were not provided
3 with accurate itemized wage statements that accurately reported their gross and net wages
4 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
5 corresponding number of hours worked, and the address of the legal entity that is the employer,
6 among other things.

7 28. Plaintiff and aggrieved employees were employees covered under one or more
8 statutes under the Labor Code, including but not limited to section 2802, but were not reimbursed
9 by Defendants for all business expenses incurred, including but not limited to expenses arising
10 from use of personal cellular devices for work purposes. Plaintiff will receive phone calls from
11 drivers and supervisors to her personal cell phone.

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Defendants were required to maintain accurate records of the hours
14 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendants failed
15 to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its
16 off-the-clock and/or unfair rounding practices, among other things.

17
18 **FIRST CAUSE OF ACTION**

19 **(Civil Penalties Under the Private Attorneys General Act,**
20 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

21 30. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
22 Complaint as if fully alleged herein.

23 31. By this complaint, Plaintiff brings this case as a representative action seeking
24 penalties for herself, the Aggrieved Employees, and the State of California in a representative
25 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
26 employee who was employed by Defendants and subject to at least one of the Labor Code
27 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
28 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,

1 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
2 2802.

3 32. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
4 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
5 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
6 not to investigate, or after 65 days have passed without notice from the LWDA.

7 33. Prior to filing this complaint, on October 21, 2022, Plaintiff gave written notice
8 of the specific provisions alleged to have been violated, including the facts and theories to
9 support the alleged violations, as required by Labor Code section 2699.3. The written notice was
10 given via certified mail to Defendants, and the LWDA by electronically filing the notice via the
11 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
12 LWDA-CM-915208-22. True and correct copy of Plaintiff's notice to the LWDA and
13 Defendants October 21, 2022, are attached hereto as **Exhibit A**.

14 34. The LWDA has not provided Plaintiff with any notice that it intends to investigate
15 the violations as alleged in Plaintiff's notice dated October 21, 2022, and more than 65 calendar
16 days have elapsed since the postmark date on the latter notice.

17 35. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
18 of this code that provides for a civil penalty to be assessed and collected by the Labor and
19 Workforce Development Agency...for a violation of this code, may, as an alternative, be
20 recovered through a civil action brought by an aggrieved employee on behalf of himself or
21 herself and other current or former employees pursuant to the procedures specified in Section
22 2699.3."

23 36. As an aggrieved employee, Plaintiff brings this civil action to recover civil
24 penalties for Defendant's Labor Code violations.

25
26 **First Violation**

27 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

28 37. Under California Labor Code §512(a), "An employer may not employ an

1 employee for a work period of more than five hours per day without providing the employee
2 with a meal period of not less than 30 minutes, except that if the total work period per day of the
3 employee is no more than six hours, the meal period may be waived by mutual consent of both
4 the employer and employee.”

5 38. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other
6 qualifying employees who worked shifts of greater than five hours, meal periods within the first
7 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour’s pay at Plaintiff’s
8 regular rate of pay for each day Defendants failed to provide a meal period in compliance with
9 section 512.

10 **Second Violation**

11 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

12 39. Under California Labor Code §226.7(b), “An employer shall not require an
13 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
14 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

15 40. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
16 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
17 of each work period. The authorized rest period time shall be based on the total hours worked
18 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

19 41. Defendants failed to authorize and permit Plaintiff and other employee to take
20 rest periods and mandated by the Wage Order.

21 42. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
22 one additional hour of pay at the employee’s regular rate of compensation for each workday that
23 the meal or rest or recovery period is not provided.”

24 43. Defendants failed to pay Plaintiff and other employees who were not provided
25 rest periods one hour of pay at their regular rate of pay.

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27 ///

**(Failure to Provide Complete and Accurate Wage Statements,
in Violation of Labor Code Section 226)**

45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

(Failure to Pay Overtime Wages)

47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

(Failure to Pay Minimum Wages)

49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties

1 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
2 Labor Code § 2699.

3 **Sixth Violation**

4 **(Failure to Timely Pay Wages During Employment)**

5 50. Pursuant to California Labor Code § 204, for all labor performed between the 1st
6 and 15th days of any calendar month, an employer is required to pay its employees between the
7 16th and 26th day of the month during which the labor was performed. California Labor Code §
8 204 also provides that for all labor performed between the 16th and 26th days of any calendar
9 month, Defendants was required to pay their employees between the 1st and 15th day of the
10 following calendar month. In addition, California Labor Code § 204 provides that all wages
11 earned for labor in excess of the normal work period shall be paid no later than the payday of the
12 next regular payroll period.

13 51. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
14 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
15 Labor Code § 2699.

16 **Seventh Violation**

17 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

18 52. Pursuant to California Labor Code § 201, 202, and 203, Defendants is required to
19 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
20 201 mandates that if an employer discharges an employee, the employee's wages accrued and
21 unpaid at the time of discharge are due and payable immediately.

22 53. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
24 Labor Code § 2699.

25 //

26 //

1 **Eighth Violation**

2 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

3 **(Against all Defendants and DOES 1 to 50, inclusive)**

4 54. Labor Code § 2802 provides that an employer shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
7 the employer.

8 55. Defendants failed to indemnify and reimburse Plaintiff for all necessary
9 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
10 job duties. Plaintiff had expenses arising from use of personal cellular devices for work purposes.
11 Plaintiff would contact agencies and employees using her personal cell phone. Plaintiff would
12 also use her personal vehicle once a week to pick up food for the employees and was not
13 reimbursed for mileage.

14 56. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
15 incurred as a result of discharging his duties, including interest.

16 57. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
17 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
18 Labor Code § 2699.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief:

- 21 1. For penalties in an amount according to proof;
22 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
23 3. For such other and further relief as this Court may deem just and proper.

24 Respectfully Submitted,

25 Dated: January 18, 2023

WORK LAWYERS, PC

26
27 By: 
28 Justin Lo, Esq.
Attorney for Plaintiff KIERRA RUSSO

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE October 21, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: KIERRA RUSSO V. MARKSTEIN SALES COMPANY. ET AL., —NOTICE OF
LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

This office represents Kierra Russo (“Ms. Russo”) with respect to her claims against Markstein Sales Company and Laura Markstein (an individual) (“Employer”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers employed Ms. Russo from approximately November 15, 2014, until her last date of employment of approximately May 19, 2022, as a non-exempt employee. During her employment with Employers, Ms. Russo was employed as a “Recon Clerk” at Employers’ plant located at 1645 Drive-In Way Antioch, CA 94509.

Ms. Russo intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Ms. Russo is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California’s wage and hour laws during Ms. Russo employment, including but not limited to violations of California Labor Code sections



201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Ms. Russo and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Ms. Russo and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Ms. Russo and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Russo and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Ms. Russo and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Russo and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Russo and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Ms. Russo and Aggrieved Employees, which resulted in a failure to pay Ms. Russo and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Ms. Russo and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Ms. Russo and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys’ fees and costs.



2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Ms. Russo and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Ms. Russo and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Ms. Russo and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Ms. Russo and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Ms. Russo and Aggrieved Employees did take a meal period, their meal periods were either late, frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Russo and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Ms. Russo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Ms. Russo and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Russo and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Ms. Russo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Russo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.



3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Ms. Russo and Aggrieved Employees take legally compliant 10-minute periods. Employers required Ms. Russo and Aggrieved Employees to work through rest periods. Ms. Russo and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Russo and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Russo and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Russo and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Ms. Russo and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Ms. Russo and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Russo and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Ms. Russo and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Russo and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Ms. Russo and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.



4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Ms. Russo and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.

As to each pay period, Employers have failed to timely pay all wages earned because Ms. Russo Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Ms. Russo and Aggrieved Employees never included the actual hours worked the time worked was illegally rounded to deprive Aggrieved Employees of all compensable work time, the complete name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a). For instance, the legal employing entity as registered with the State of California is "Markstein Sales Company" whereas the entity listed on Ms. Russo's and Aggrieved Employees wage statement is "Markstein Sales Co".

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Ms. Russo and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).



Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. Russo and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

9. FAILURE TO PAY VACATION TIME.

Pursuant to California Labor Code section 227.3, ". . .whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employers failed to pay Ms. Russo and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Ms. Russo and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

Sincerely,


JUSTIN LO ESQ.



Notice via Certified Mail

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