

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Elaine Lu

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Attorneys for Plaintiff,
JENNIFER SING on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JENNIFER SING, an individual, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

VIAANT UPLAND, INC., a California
Corporation and DOES 1-50, inclusive,

Defendant.

Case No.: **23STCV03510**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff JENNIFER SING brings this PAGA representative action complaint on behalf of
2 herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff JENNIFER SING worked as an employee for Defendant VIANT UPLAND,
6 INC. and Does 1-50 (collectively “Defendant”). Defendant is a manufacturer of medical devices
7 and equipment in Los Angeles, California. Plaintiff JENNIFER SING worked for Defendant in
8 their Upland facility until June of 2022. Plaintiff brings this action pursuant to the Private
9 Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative
10 basis. All current and former employees of Defendant within one year of serving notice on the
11 LWDA to the present are aggrieved employees.

12 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
13 willful and intentional employment practices and policies. Plaintiff brings this representative
14 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below. Plaintiff provided notice of her claims
16 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
17 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
18 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
19 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
20 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

21 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
22 worked, including overtime hours worked; (2) failing to provide rest breaks; (3) failing to provide
23 uninterrupted meal breaks; (4) failing to pay wages due upon termination; (5) failing to provide
24 accurate itemized wage statements and violating record keeping requirements. Defendant is
25 therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney
26 General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

1 **THE PARTIES**

2 7. Plaintiff JENNIFER SING is a resident of the State of California and worked for
3 Defendant until June of 2022.

4 8. Defendant VIANT UPLAND, INC. is a California corporation authorized to do business
5 and doing business in California with the capacity to sue and to be sued, and doing business, in the
6 county of Los Angeles, State of California.

7 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
8 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
9 informed and believes and thereon alleges that said Defendant is legally responsible for the
10 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
11 will amend this complaint when their true names and capabilities are ascertained.

12 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
13 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
14 of the representative class, and exercised control over their wages, hours, and working conditions.
15 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
16 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
17 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
18 to the other Defendants.

19 **JURISDICTION AND VENUE**

20 11. Venue is proper in this judicial district because Defendant conducts business in this
21 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
22 in this case that arose in this county.

23 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
24 the Superior Court and will be established according to proof at trial. Based on information,
25 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
26 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
27 (\$25,000).
28

1 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendant is qualified to do business in California and regularly conduct
3 business in California. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 14. During the relevant time-period, Defendant committed various violations of the
7 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 15. This representative action represents over one hundred current and former aggrieved
10 employees.

11 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 17. Plaintiff and all current and former employees within one year of filing this action to
15 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
16 code §2699(c).)

17 18. Defendant, and each of them, have committed the following violations of the California
18 Labor Code:

19 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

20 (Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197,
21 1197.1, 1198, 2698 *et seq.*, Wage Orders)

22 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 20. The relevant Wage Orders define “hours worked” as “the time during which an
25 employee is subject to the control of an including all the time the employee is suffered or permitted
26 to work, whether or not required to do so.” Defendant has been engaged in many unlawful
27 employment practices which resulted in underpayment for hours worked each pay period as
28 described below:

1 21. Off the Clock Temperature Checks & Screening. Defendant required employees to
2 undergo temperature checks and screening in connection with its covid-safety protocol. Defendant
3 conducted this screening off the clock although it was clearly required and should have been paid
4 as time worked.

5 22. Timecard Rounding. Employee timecards are rounded to the nearest quarter-hour in a
6 manner that favors Defendant. Indeed, with Defendant's strict policies against arriving to work
7 late, Plaintiff and aggrieved employees clock in before their shift start time and this consistently
8 benefitted Defendant. The California Supreme Court has rejected the *de minimis* argument
9 frequently echoed by Defendants, confirming that employees are entitled to payment for all hours
10 (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding
11 policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a
12 period of time, in failure to compensate the employees properly for all the time they have actually
13 worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210
14 Cal.App.4th at p. 907.) The policy utilized by Defendant is neither fair nor neutral, as it
15 consistently shaved time from Plaintiff and aggrieved employees' hours worked, resulting in a
16 failure to compensate Plaintiff and aggrieved employees for all hours worked.

17 23. Work Performed During Unpaid Meal Periods. As more fully set forth below,
18 Defendant failed to permit Plaintiff and others to take timely, uninterrupted, off-duty meal breaks
19 of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
20 §§226.7 and 512. Plaintiff's meal breaks were often interrupted resulting in underpaid hours
21 worked.

22 24. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff
23 and aggrieved employees for all hours worked as a result of Defendant's practices described
24 above. Based on Defendant's unlawful conduct described above, Defendant's failure to pay for
25 all hours worked, including overtime, resulted in a payment of less than the minimum wage for
26 those hours worked in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders.
27 Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*
28

1 25. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
2 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
3 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
4 unlawful employment policies and practices discussed herein. As a result of these practices,
5 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
6 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
7 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
8 by law.

9 **Failure to Provide Rest Breaks**

10 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

11 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 27. Defendant has failed to maintain a compliant rest period policy and practice that
14 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
15 that she and her coworkers often had their rest breaks interrupted and they were not relieved of all
16 duties

17 28. Uninterrupted rest periods were not consistently provided or not scheduled before and
18 after a meal period for shifts greater than six hours, as prescribed by California law because
19 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
20 (2) did not adequately inform and train employees about their rights to rest breaks and premium
21 payments for non-compliant rest breaks; (3) did not adequately inform and train employees about
22 when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because
23 Defendant did not staff enough people to schedule all timely and uninterrupted ten-minute rest
24 breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt
25 employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

26 29. Defendant did not authorize or permit all of its hourly employees to take at least a ten
27 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
28 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order. When breaks were

missed or unlawfully interrupted Defendant failed to pay the 1-hour penalty, as required.

Because Defendant violated the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

31. During Plaintiff's employment, Defendant failed to maintain a compliant meal period policy and practice. Defendant failed to provide all of its hourly employees with their right to take an uninterrupted, off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

32. Plaintiff and aggrieved employees experienced frequent meal period violations. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff and aggrieved

1 employees were not paid a premium payment, paid as an hour's wage when meal periods were not
2 given to them in compliance with California law

3 **Failure to Pay Wages Due Upon Termination**

4 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

5 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 34. An employee who is discharged must be paid all of his or her wages, including
8 accrued vacation and rest break penalty wages, immediately at the time of termination. (Labor
9 Code Sections 201 and 227.3.) As set forth above, Defendant knowingly and willfully failed to
10 pay all compensation due and owing to Plaintiff at the time employment terminated. Defendant
11 willfully failed to pay employees who are no longer employed by it all compensation due upon
12 termination of employment as required by Cal. Lab. Code §§201 and 202. Plaintiff and similarly
13 situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under
14 the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to Cal. Lab. Code §
15 2698 *et. seq.*

16 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
17 **Requirements**

18 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

19 35. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 36. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
22 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
23 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
24 aggrieved employees, and the records maintained by Defendant, erroneously include shift
25 differential pay in the total hours worked calculation, resulting in an incorrect statement of total
26 hours worked. Such failures caused injury to Plaintiff and others, by, among other things,
27 impeding them from knowing the full and complete amount of wages to which they are entitled.
28 Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved

1 employees to sign employment related contracts and documents that contained unlawful terms of
2 employment.

3 **FIRST CAUSE OF ACTION**

4 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**
5 **(California Labor Code §2698 *et seq.*)**

6 37. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

8 38. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
9 during the applicable statutory period and suffered one or more of the Labor Code violations set
10 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
11 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
12 attorneys’ fees and costs.

13 39. Plaintiff seeks to recover the PAGA civil penalties through a representative action
14 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
15 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

16 40. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
17 Code provisions:

- 18 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
19 Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194,
20 1197, 1197.1, 1198, 2698 *et seq.*, and the relevant Wage Orders);
- 21 b. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
22 2698 *et seq.*);
- 23 c. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
24 558, 1198, 2699 *et seq.*
- 25 d. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§226, 226.7, 512,
26 558, 1198, 2699 *et seq.*);
- 27 e. Failure to Provide Accurate Itemized Wage Statements and Violation of Record
28 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

1 41. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
2 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
3 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
4 employee for each subsequent violation of Labor Code §226(a).

5 42. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
6 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
7 for each underpaid employee for each pay period for which the employee was underpaid, and one
8 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
9 for which the employee was underpaid.

10 43. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
11 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
12 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
13 a civil penalty is not specifically provided.

14 44. Plaintiff and the other current and former employees of Defendant are aggrieved
15 employees. They were or are employed by Defendant, and each of them, and the violations alleged
16 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
17 current and former aggrieved employees.

18 45. At the time of each violation, Defendant employed one or more employees.

19 46. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
20 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
21 determined at trial, pre-judgment interest, costs and attorneys' fees.

22 47. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
23 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
24 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
25 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
26 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
27 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
28

§2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

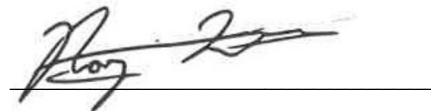
WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: February 17, 2023

KOUL LAW FIRM

LAW OFFICES OF SAHAG MAJARIAN II



BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff JENNIFER SING, and all
aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

December 14, 2022

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Viant Upland, Inc.
2 Hampshire Street
Foxborough, MA 02035

Viant Upland, Inc.
c/o CT Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Jennifer Sing
Employer: Viant Upland, Inc.

Dear Sir or Madam:

Claimant Jennifer Sing has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, P.C. to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Viant Upland, Inc. (hereafter “Employer”).

Employer is a manufacturer of medical devices and equipment. Claimant worked in Employer’s Upland facility until June of 2022. Claimant’s proposed PAGA representative action would represent numerous aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 1)

Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below:

Off the Clock Temperature Checks & Screening

Employer required employees to undergo temperature checks and screening in connection with its covid-safety protocol. Employer conducted this screening off the clock although it was clearly required and should have been paid as time worked.

Timecard Rounding

Employee timecards are rounded to the nearest quarter-hour in a manner that favors Employer. Indeed, with Employer’s strict policies against arriving to work late, Claimant and aggrieved employees clock in before their shift start time and this consistently benefitted Employer.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, uninterrupted, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employees meal breaks were often interrupted resulting in underpaid hours worked.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above. Based on Employer’s unlawful conduct described above, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for those hours worked in violation of Labor Code §1197, 1197.1, 1199

and Wage Order 4-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she and her coworkers often had their rest breaks interrupted and they were not relieved of all duties.

Uninterrupted rest periods were not consistently provided or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1. When breaks were missed or unlawfully interrupted Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an uninterrupted, off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without

providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees experienced frequent meal period violations. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour’s wage when meal periods were not given to them in compliance with California law.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation and rest break penalty wages, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved

employees, and the records maintained by Employer, erroneously include shift differential pay in the total hours worked calculation, resulting in an incorrect statement of total hours worked.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the full and complete amount of wages to which they are entitled.

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant