

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3160 Camino del Rio South, Suite 308
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Caitlin Raymond

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County of San Diego

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

CAITLIN RAYMOND, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

ALPHATEC SPINE, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2023-00012914-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

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

1 Plaintiff CAITLIN RAYMOND, on behalf of all aggrieved employees and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants ALPHATEC SPINE, INC. and DOES 1 through 50,
4 inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This action challenges Alphatec’s policy and practice of not including all forms of
7 remuneration in the “regular rate” due for overtime, sick pay, and premium wages.

8 2. Alphatec’s arbitration agreement includes a PAGA carve out, rendering this court the
9 proper forum for Plaintiff’s representative claims under the Private Attorneys General Act.

10 3. Through this action, Plaintiff seeks to settle or prosecute the underlying Labor Code
11 violations on behalf of the aggrieved employees, to recover civil penalties, and to compel compliance
12 and correction of the foregoing policies and practices.

13 **JURISDICTION & VENUE**

14 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution as the causes of action are premised upon violations of California law.

16 5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

18 6. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California economy so as to render the exercise of jurisdiction over them by the
21 California courts consistent with traditional notions of fair play and substantial justice.

22 7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

PARTIES

A. Plaintiff Caitlin Raymond

8. Plaintiff Raymond is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2019 to October 2022. Plaintiff worked as a Data Entry Specialist.

9. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

10. Defendant Alphatec Spine, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

12. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

13. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

14. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

15. Alphatec paid aggrieved employees like Plaintiff additional forms of remuneration, such as annual bonuses, incentives, differentials, and commissions, and other non-excludable forms of pay, including the “Corporate Bonus.”

16. According to compensation plans and offer letters applicable to these additional forms of remuneration, the earnings were non-discretionary in nature, based on objective metrics and goals, and not subject to a statutory exclusion from the regular rate calculation.

17. Under Labor Code § 510, overtime must be calculated and paid at the “regular rate of pay.”

18. Under Labor Code § 226.7, premiums must be calculated and paid at the “regular rate of compensation.”

19. Under Labor Code § 246 through 248.7, sick pay must be paid according to one of the specific statutory methods, which requires a calculation over and above the base hourly rate, inclusive of all forms of non-excludable remuneration.

20. Alphatec violated Labor Code §§ 226.7, 510, and 246 through 248.7 by failing to include the annual bonuses, incentives, differentials, and commissions, and other non-excludable forms of pay, including the “Corporate Bonus” in the hourly rates applicable to overtime, Labor Code § 226.7 premiums, and sick pay.

21. As a result of this practice, wage statements issued to aggrieved employees under Labor Code § 226(a) incorrectly stated the gross and net wages earned and the accurate hourly rate in effect for those earnings categories, in violation of subsections (a)(1), (5), and (9).

22. Furthermore, Alphatec violated Labor Code §§ 201 through 203 and 204 *et seq.*, due to the regular rate underpayments, by failing to pay all wages owed to the respective aggrieved employees each pay day or upon separation of employment.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **Violation of Labor Code §§ 2698 *et seq.***

4 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

5 23. All outside paragraphs of this Complaint are incorporated into this section.

6 24. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

9 a. All current and former non-exempt employees who [1] worked for Defendants
10 in California at any time from one year prior to the postmark date of the initial
11 PAGA notice through date of trial who [2] earned annual bonuses, incentives,
12 differentials, and commissions, and other non-excludable forms of pay,
13 including the “Corporate Bonus.”

14 25. Plaintiff reserves the right to amend, supplement, or add to this description of the
15 aggrieved employees, according to proof.

16 26. The State of California, via the Labor and Workforce Development Agency
17 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
18 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
19 files suit is always the real party in interest.”])

20 27. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
21 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
22 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
23 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
24 action brought by an aggrieved employee on behalf of himself or herself and other current or former
25 employees pursuant to the procedures specified in Section 2699.3. “

26 28. Labor Code section 2699(f) provides: “For all provisions of this code except those for
27 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
28 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more

employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

29. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

30. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

31. On or about **January 18, 2023**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

32. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s written PAGA notice from the LWDA.

33. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

34. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

35. Plaintiff seeks to recover all recoverable civil penalties based exclusively upon the following violations set forth in the PAGA notice:

- a. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.
- b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- c. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

1 d. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
2 Labor Code §§ 201, 202, 203.

3 e. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226.

4 36. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
5 alleged in this Complaint against Defendants pursuant to Labor Code section 2699(a) and (f), in
6 addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor
7 Code section 2699(g).

8 **PRAYER**

9 Plaintiff prays for judgment as follows:

- 10 a. For this action to be maintained as a representative action under the PAGA;
11 b. For Plaintiff and counsel of record to be provided with all enforcement capability as if
12 the action were brought by the State of California or the California Division of Labor
13 Enforcement;
14 c. For recovery of all civil penalties and other recoverable amounts under the PAGA;
15 d. For restitution and injunctive relief;
16 e. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
17 permitted by law, including (without limitation) under Labor Code § 2699 and Code of
18 Civil Procedure section 1021.5; and
19 f. For such other relief the Court deems just and proper.

20
21 Dated: March 29, 2023

Ferraro Vega Employment Lawyers, Inc.

22 

23 Nicholas J. Ferraro

24 *Attorneys for Plaintiff Caitlin Raymond*