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\$435 PAID

8 **Attorneys for Plaintiff Angelina Paddack as proxy for the LWDA**

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF STANISLAUS**

11 **ANGELINA PADDACK, an individual,**

Case No.: CV-23-001403

12 **Plaintiff,**

**REPRESENTATIVE COMPLAINT FOR
PENALTIES FOR:**

13 **vs.**

**1. LABOR CODE PRIVATE ATTORNEY
GENERAL ACT VIOLATIONS (Labor
Code §§ 2698 *et seq.*)**

14 **R.F. MACDONALD CO., a California
corporation, and DOES 1-10, inclusive,**

15 **Defendants.**

16
17 Plaintiff Angelina Paddack brings this representative action for penalties against Defendants
18 R.F. MacDonald Co. and Does 1-10 for violations of the California Labor Code.

19 **PARTIES**

20 1. Angelina Paddack ("Paddack" or "Plaintiff") is and was at all times relevant herein an
21 individual and was an employee as defined by the California Labor Code.

22 2. R.F. MacDonald Co. ("R.F. MacDonald" or "Defendant") is and was at all times
23 relevant herein a corporation organized under the laws of the State of California, with principal place of
24 business in California, doing business in California, and was an employer as defined by the California
25 Labor Code.

26 3. R.F. MacDonald and Does 1-10 are collectively referred to herein as Defendants.

1 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
2 Does 1 through 10, whether individual, corporate, associate, or otherwise and therefore sue such
3 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
4 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
5 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
6 and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants.
7 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
8 and/or employment, with the knowledge and/or consent of said co-Defendant.

9 5. Plaintiff is informed and believe and thereupon alleges that at all times mentioned
10 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
11 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
12 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
13 within the course and scope of such agency, service, employment partnership, joint venture and/or
14 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
15 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
16 the remaining Defendants.

17 **VENUE AND JURY TRIAL DEMAND**

18 6. Venue is proper in this Court because unlawful acts as to Plaintiff alleged herein took
19 place in Stanislaus County. Plaintiff hereby demands a jury trial.

20 **GENERAL ALLEGATIONS**

21 7. Plaintiff was employed by R.F. MacDonald as a boilermaker from September 2015
22 through September 2022. Throughout Plaintiff's employment, she worked in Defendants' Modesto
23 location as an hourly, non-exempt employee.

24 8. R.F. MacDonald services and sells boilers, pumps, composites, and accessories for
25 commercial and industrial applications within the State of California and employs in excess of 250
26 employees in ten offices throughout California and Nevada.

27 9. During Plaintiff's employment, and within the last year, Plaintiff and other non-exempt
28 employees were not permitted by Defendant to take all timely, 30-minute uninterrupted meal periods to

1 which they were entitled. Rather, on numerous occasions, Defendants, through its supervisors, required
2 Plaintiff and other non-exempt employees to skip meal periods, take meal periods late, or take
3 abbreviated meal periods, in violation of Labor Code section 512. Defendants prevented and
4 discouraged Plaintiff from taking all legally compliant meal breaks as a result of her heavy workload
5 and work scheduling. Further, Defendant did not pay Plaintiff or other non-exempt employees the
6 premium wage they were due pursuant to Labor Code section 226.7.

7 10. Similarly, during Plaintiff's employment, and within the last year, Plaintiff and other
8 non-exempt employees were not permitted by Employer to take a net ten-minute rest period for every
9 four hours worked or major fraction thereof, in violation of Labor Code section 226.7 and the
10 applicable IWC wage order(s). Defendants prevented and discouraged Plaintiff from taking all legally
11 compliant rest breaks as a result of her heavy workload and work scheduling. Further, Defendant did
12 not pay Plaintiff or other non-exempt employees the premium wages they were due pursuant to Labor
13 Code section 226.7.

14 11. Through the above violations, as to former employees impacted such as Plaintiff,
15 Defendant violated Labor Code sections 201 and 202 by failing to pay all wages due at termination or
16 resignation.

17 12. In addition, Defendant's wage statements fail to accurately state the total hours worked
18 by non-exempt employees. On each of Defendant's wage statements, Defendant specifically identifies
19 a quantity labeled "Total Hours Worked." However, in each and every pay period in which Plaintiff
20 and other non-exempt employees were on the clock and paid for travel time, which constitutes hours
21 worked under the Labor Code, those hours are excluded from the total identified on wage statements by
22 Defendant as "Total Hours Worked."

23 13. For example, during the pay period ending on March 7, 2022, Plaintiff actually worked a
24 total of 65.25 hours, with 0.25 of those hours being travel time. However, Defendant inaccurately
25 states that Plaintiff's "Total Hours Worked" was 65.00.

26 14. Similarly, during the pay period ending April 4, 2022, Plaintiff actually worked 76.50
27 hours, but Defendant inaccurately identified her "Total Hours Worked" as 75.25.

1 15. As a result, Defendant failed to furnish Plaintiff and other non-exempt employees with
2 accurate, itemized wage statements showing, among other things, total hours worked, in violation of
3 Labor Code section 226(a)(2).

4 16. Because Defendant furnished wage statements with conflicting information, Plaintiff
5 and other non-exempt employees were unable to promptly and easily determine the accurate number
6 for their total hours worked in each pay period in which they were traveling during their work shift.
7 Instead, Plaintiff and other non-exempt would be required to resort to other documents or information
8 to determine whether the number listed by Defendant as “Total Hours Worked” or the sum of the line
9 items on their wage statements accurately reflected the total hours worked by the employee during the
10 pay period.

11 17. On January 11, 2023, Plaintiff through her counsel of record filed a notice with the
12 California Labor and Workforce Development Agency via online portal (“PAGA Notice”) setting forth
13 the violations of the Labor Code alleged to have been committed by Defendants against their
14 employees and the facts and theories to support the alleged violations. A true and correct copy of
15 Plaintiff’s PAGA Notice is attached to this complaint as **Exhibit 1** and incorporated by this reference.
16 Plaintiff, through her counsel of record, sent a copy of her PAGA Notice to Defendants by certified
17 mail on the same day.

18 18. On February 3, 2023, Plaintiff through her counsel of record filed an amended notice
19 with the California Labor and Workforce Development Agency via online portal (“PAGA Notice”)
20 setting forth additional violations of the Labor Code alleged to have been committed by Defendants
21 against their employees and the facts and theories to support the alleged violations. A true and correct
22 copy of Plaintiff’s PAGA Notice is attached to this complaint as **Exhibit 2** and incorporated by this
23 reference. Plaintiff, through her counsel of record, sent a copy of her PAGA Notice to Defendants by
24 certified mail on the same day.

25 19. As of the filing of this complaint, which is more than 65 calendar days since Plaintiff
26 filed her amended PAGA Notice with the LWDA and sent copies of the amended PAGA Notice to
27 Defendants by certified mail, the LWDA has not given notice that it intends to investigate the alleged
28 violations set forth therein. Accordingly, Plaintiff has standing as an aggrieved employee to pursue

1 claims for civil penalties under PAGA against Defendants for the violations set forth in her PAGA
2 Notice.

3 **FIRST CAUSE OF ACTION**
4 **VIOLATION OF LABOR CODE SECTION 2699 *et seq.***
5 **(Labor Code Private Attorney General Act Violations)**
6 **Against All Defendants**

7 20. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 21. The Private Attorneys General Act (“PAGA”), as set forth at California Labor
11 Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Plaintiff’s employment by
12 Defendants.

13 22. Pursuant to Labor Code § 2699(a) any provision of the Labor Code which provides for
14 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
15 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil
16 action brought by an aggrieved employee on behalf of himself or herself and other current or former
17 employees pursuant to the procedures outlined in Labor Code § 2699.3. California Labor Code §
18 2699(a).

19 23. Pursuant to PAGA, an “aggrieved employee” is “any person who was employed by the
20 alleged violator and against whom one or more of the alleged violations was committed.” Labor
21 Code § 2699(c).

22 24. Plaintiff was employed by Defendants and the alleged violations were committed
23 against her during her time of employment and have continued thereafter. Plaintiff is therefore an
24 aggrieved employee as defined by Labor Code § 2699(c). Other current and former employees are
25 also aggrieved employees in that one or more of the alleged violations were committed against them
26 during their time of employment with Defendants.

27 25. Defendants violated the Labor Code as to Plaintiff and other current and former
28 employees as set forth in Exhibits 1 & 2.

1 26. Pursuant to California Labor Code § 2699(g), an aggrieved employee may recover the
2 civil penalty on behalf of himself or herself and other current or former employees against whom
3 one or more of the alleged violations was committed. Furthermore, any employee who prevails in
4 any action shall be entitled to an award of reasonable attorney's fees and costs.

5 27. Pursuant to Labor Code § 2699.3, an aggrieved employee, including Plaintiff, may
6 pursue a civil action arising under PAGA after the following requirements have been met:

7 a. The aggrieved employee shall give written notice by online filing to the
8 LWDA and by certified mail to the employer (hereinafter "Employee's Notice") of the
9 specific provisions of California Labor Code alleged to have been violated, including the
10 facts and theories to support the alleged violations;

11 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
12 employer and the aggrieved employee by certified mail that it does not intend to investigate
13 the alleged violation within 60 days of the postmark date of the Employee's Notice. Upon
14 receipt of the LWDA's Notice, or if the LWDA does not provide notice with 65 calendar
15 days of the postmark date of the Employee's Notice, the aggrieved employee may
16 commence a civil action pursuant to California Labor Code § 2699 to recover civil
17 penalties in addition to any other penalties to which the employee may be entitled.

18 c. For all alleged violations not enumerated in Labor Code § 2699.5, the
19 employer is given thirty-three (33) days to cure and notify the aggrieved employee by
20 certified mail that the violation has been cured. If the violation is not cured, the aggrieved
21 employee may commence a civil action pursuant to California Labor Code § 2699 to
22 recover civil penalties in addition to any other penalties to which the employee may be
23 entitled.

24 28. As set forth above, Plaintiff complied with these requirements and has standing to seek
25 civil penalties for the violations described in her initial and amended PAGA notices. Specifically,
26 Plaintiff seeks to recover penalties for Defendants violations of the following provisions of the Labor
27 Code:

28 a. Labor Code sections 201/202;

- b. Labor Code section 226(a)(2);
- c. Labor Code section 226.7;
- d. Labor Code section 512;

29. Wherefore, Plaintiff seeks civil penalties, attorneys' fees and costs as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. That this Court award civil penalties pursuant to the PAGA, including but not limited to, those available under Labor Code section 226.3, 256, 558, and 2699(f);
2. That this Court award statutory attorneys' fees and costs, including those available under Labor Code section 2699(g);
3. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code sections 3287(a) and 3289(b);
4. That this Court award such other and further relief as the Court deems just and proper.

DATED: March 20, 2023

MAYALL HURLEY P.C.

By _____
VLADIMIR J. KOZINA
Attorneys for Plaintiff
ANGELINA PADDACK

Exhibit 1

SOUTHERN CALIFORNIA OFFICE
.....
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

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JOHN P. BRISCOE
VLADIMIR J. KOZINA
ANGELA C. RUSSELL

OF COUNSEL
J. ANTHONY ABBOTT

January 11, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/308>

The State of California Labor and Workforce Development Agency

SENT VIA CERTIFIED MAIL

R.F. MacDonald Co., Inc.
25920 Eden Landing Road
Hayward, CA 94545

Re: Angelina Paddack

To Whom It May Concern:

This firm represents Angelina Paddack relating to her former employment as a non-exempt hourly employee for R.F. MacDonald Co., Inc. ("Employer"). In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Paddack's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Employer services and sells boilers, pumps, composites, and accessories for commercial and industrial applications within the State of California and employs in excess of 250 employees in ten offices throughout California and Nevada. Ms. Paddack worked for Employer as an hourly, non-exempt boilermaker, and remained so employed until she was terminated on or about September 2022. During the course of her employment and within the last year, Ms. Paddack and other non-exempt employees were paid a different rate for their travel time than they were for their regular hours. When Ms. Paddack and other non-exempt employees worked overtime during a workweek within which they were paid both at a travel time rate and their base rate of pay, Employer failed to pay Ms. Paddack and other non-exempt employees at their regular rates of pay as required by Labor Code section 510. For example, during the pay period ending on March 7, 2022, Ms. Paddack was paid at a rate of \$61.80 per hour for travel time and

Labor and Workforce Development Agency
R.F. MacDonald Co.
Re: Angelina Paddack
January 11, 2023
Page 2 of 3

\$53.00 per hour for her regular time. However, Ms. Paddack was only paid at a rate of \$79.47 per hour for her overtime, less than 1.5 times her base rate of \$53.00 per hour, which was also the lowest rate she earned that pay period. Similarly, during the pay period ending on April 4, 2022, Ms. Paddack was paid for 71.75 hours at a rate of \$53.00, 0.25 hours of travel time at a rate of \$35.33 per hour, 1.00 hours of travel time at a rate of \$61.69 per hour, and 3.50 hours of overtime at \$79.36 per hour. Though Ms. Paddack's regular rate of pay was more than \$53.00 per hour, she was paid at a rate of \$79.36 per hour, again less than 1.5x her regular rate of pay. Accordingly, Defendants violated Labor Code section 510 as to Ms. Paddack and its other current and former non-exempt employees.

While Ms. Paddack was employed by Employer, she, from time to time, was required to use sick time. This was and is true of other former and current employees of Employer. However, Employer failed to pay sick time at the applicable regular rate in instances in which Ms. Paddack, and other former and current employees, were also paid travel time, in violation of Labor Code section 246(l)(1).

During Ms. Paddack's employment, and within the last year, Ms. Paddack and other non-exempt employees were not permitted by Employer to take all timely, 30-minute uninterrupted meal periods to which they were entitled. Rather, on numerous occasions, Employer, through its supervisors, required Ms. Paddack and other non-exempt employees to skip meal periods, take meal periods late, or take abbreviated meal periods, in violation of Labor Code section 512. Further, Employer did not pay Ms. Paddack or other non-exempt employees the premium wage they were due pursuant to Labor Code section 226.7

Similarly, during Ms. Paddack's employment, and within the last year, Ms. Paddack and other non-exempt employees were not permitted by Employer to take a net ten-minute rest period for every four hours worked or major fraction thereof, in violation of Labor Code section 226.7 and the applicable IWC wage order(s). Further, Employer did not pay Ms. Paddack or other non-exempt employees the premium wages they were due pursuant to Labor Code section 226.7.

Through the above violations, as to former employees impacted such as Ms. Paddack, Employer violated Labor Code sections 201 and 202 by failing to pay all wages due at termination or resignation.

Further, and because of the aforementioned violations, Employer failed to furnish Ms. Paddack and other non-exempt employees with accurate, itemized wage statements showing, among other things, the gross and net wages earned and all applicable hourly rates and the number of hours worked at each rate, all in violation of Labor Code sections 226(a)(1), (5), and (9).

Labor and Workforce Development Agency
R.F. MacDonald Co.
Re: Angelina Paddack
January 11, 2023
Page 3 of 3

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Ms. Paddack.

If the LWDA does not intend to investigate these violations, Ms. Paddack intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Sincerely,

MAYALL HURLEY P.C.

By  _____
VLADIMIR J. KOZINA

Mayall Hurley, P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207



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R.F. MacDonald Co., Inc.
25920 Eden Landing Road
Hayward, CA 94545

Exhibit 2

SOUTHERN CALIFORNIA OFFICE

450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

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OF COUNSEL
J. ANTHONY ABBOTT

February 3, 2023

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In addition to the violations set forth in Ms. Paddack's original notice, Employer's wage statements fail to accurately state the total hours worked by non-exempt employees. On each of Employer's wage statements, Employer specifically identifies a quantity labeled "Total Hours Worked." However, in each and every pay period in which Ms. Paddack and other non-exempt employees were on the clock and paid for travel time, which constitutes hours worked under the Labor Code, those hours are excluded from the total identified on wage statements by Employer as "Total Hours Worked." For example, during the pay period ending on March 7, 2022, Ms. Paddack actually worked a total of 65.25 hours, with 0.25 of those hours being travel time. However, Employer inaccurately states that Ms. Paddack's "Total Hours Worked" was 65.00. Similarly, during the pay period ending April 4, 2022, Ms. Paddack actually worked 76.50 hours,

Labor and Workforce Development Agency

R.F. MacDonald Co.

Re: Angelina Paddack

February 3, 2023

Page 2 of 2

but Employer inaccurately identified her "Total Hours Worked" as 75.25. As a result, in addition to the violations previously identified in Ms. Paddack's initial notice, Employer failed to furnish Ms. Paddack and other non-exempt employees with accurate, itemized wage statements showing, among other things, total hours worked, in violation of Labor Code section 226(a)(2).

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Ms. Paddack.

If the LWDA does not intend to investigate these violations, Ms. Paddack intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

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While Ms. Paddack was employed by Employer, she, from time to time, was required to use sick time. This was and is true of other former and current employees of Employer. However, Employer failed to pay sick time at the applicable regular rate in instances in which Ms. Paddack, and other former and current employees, were also paid travel time, in violation of Labor Code section 246(l)(1).

During Ms. Paddack's employment, and within the last year, Ms. Paddack and other non-exempt employees were not permitted by Employer to take all timely, 30-minute uninterrupted meal periods to which they were entitled. Rather, on numerous occasions, Employer, through its supervisors, required Ms. Paddack and other non-exempt employees to skip meal periods, take meal periods late, or take abbreviated meal periods, in violation of Labor Code section 512. Further, Employer did not pay Ms. Paddack or other non-exempt employees the premium wage they were due pursuant to Labor Code section 226.7

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R.F. MacDonald Co.
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In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Ms. Paddack.

If the LWDA does not intend to investigate these violations, Ms. Paddack intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention to this matter.

Sincerely,

MAYALL HURLEY P.C.

By


VLADIMIR J. KOZINA

Mayall Hurley, P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207



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