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Attorney for Plaintiff
Michelle Velasquez

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

MICHELLE VELASQUEZ, individually and on
behalf of all similarly situated individuals and
aggrieved employees,

Plaintiffs,

v.

THE TOX CORPORATION, THE TOX
HOLDINGS, LLC, THE TOX LA MELROSE
PLACE, LLC, and DOES 1 to 100,

Defendants.

) NO. 23STCV05507
) CLASS ACTION
)
) **FIRST AMENDED COMPLAINT**
)
) 1. Meal Period Violations
) 2. Rest Period Violations
) 3. Overtime Violations
) 4. Minimum Wage Violations
) 5. Wage Statement Penalties
) 6. Violation of Unfair Competition Law
) 7. PAGA Penalties

Assigned to Hon. Lawrence Riff, Dept. 7

PRELIMINARY ALLEGATIONS

1. Plaintiff Michelle Velasquez is a resident of Los Angeles County.
2. Defendant The Tox Corporation is a corporation based in Los Angeles County.
3. Defendant The Tox Holdings, LLC is a limited liability company based in Los Angeles County.
4. Defendant The Tox LA Melrose, LLC is a limited liability company based in Los Angeles County.
5. Defendants operate massage facilities called "The Tox" with locations in Studio City, Los Angeles, Costa Mesa, and Alamo (Contra Costa County).

1 6. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses
2 fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 to allege the
3 true names and capacities when ascertained.

4 7. Plaintiff is informed and believes that each of the Defendants was the agent or employee of
5 the other defendants and acted in the scope of agency or employment.

6 8. Defendants employed Plaintiff and the class members as massage therapists. Therefore,
7 Wage Order 4 applies.

8 9. Throughout Plaintiff's and the class members' employment, they did not receive compliant
9 meal and rest periods, did not receive accurate wage statements, were not paid for all time worked,
10 and did not receive overtime at the correct regular rate.

11 10. Plaintiff and class members have complained to Defendants about the above, but their
12 complaints were disregarded.

13 11. On February 27, 2023 Plaintiff sent a PAGA letter by certified mail to Defendants and
14 uploaded the PAGA letter to the LWDA website. Since it has been more than 65 days, Plaintiff
15 may now request PAGA penalties.

16
17 CLASS ACTION ALLEGATIONS

18 12. The class is defined as the following: "All non-exempt employees who worked for
19 Defendants in California from four years before the date of filing the complaint to the date of
20 certification or judgment, whichever is earlier."

21 13. There is a well-defined community of interest, and the proposed class is ascertainable from
22 Defendants' employment records. Further, the following apply to show the viability of a class
23 action pursuant to Code of Civil Procedure section 382:

- 24 a. Numerosity: The members of the class as defined are so numerous that joinder
25 of all class members is impracticable.
- 26 b. Commonality: This action involves common questions of law and fact to the
27 class because the action focuses on Defendants' systematic course of conduct
28 with respect to violating the Labor Code and IWC Wage Order.

- 1 c. Typicality: The claims are typical of the claims of the class. Plaintiff was
2 subjected to the same violations and seeks the same types of damages,
3 restitution, and other relief on the same as those of the members of the class.
- 4 d. Adequacy of Representation: Plaintiff will fairly and adequately represent and
5 protect the interests of the class. Plaintiff understands the obligations as a class
6 representative and is willing and able to fulfill them. Plaintiff's counsel is
7 competent and experienced in litigating large employment class actions and
8 complex litigation matters, including wage and hour cases like this.
- 9 e. Superiority of Class Action: A class action is superior to other available means
10 for the efficient adjudication. Class action treatment will allow similarly situated
11 persons to pursue the claims in a manner that is most efficient and economical.

12 14. There are common questions of law and fact including but not limited to:

- 13 a. Whether Defendants did not pay overtime at the correct regular rate of pay in
14 violation of Labor code sections 510 and 1194;
- 15 b. Whether Defendant violated Labor Code section 512 and Wage Order 4 by not
16 providing meal breaks;
- 17 c. Whether Defendant violated Labor Code section 512 and Wage Order 4 by not
18 providing rest breaks;
- 19 d. Whether Defendants violated Labor Code section 226 by providing inaccurate
20 wage statements;
- 21 e. Whether Defendant violated Labor Code section 226.7 by not paying premium
22 pay for missed meal and rest breaks;
- 23 f. Whether Defendants did not pay for time that was performed off the clock in
24 violation of Labor Code section 1194;
- 25 g. Whether Defendants engaged in unfair competition; and
- 26 h. The amount of damages, wages, and penalties owed.

27 ///

1 FIRST CAUSE OF ACTION

2 Meal Period Violations

3 Against All Defendants

4 15. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

5 16. Labor Code section 226.7 requires employers to provide its employees meal periods as
6 mandated by IWC Wage Order 4 and Labor Code section 512(a).

7 17. These provisions also provide that an employer may not employ any person for a work
8 period of more than five hours per day without a meal period of not less than 30 minutes.

9 18. The meal periods, if any, taken by Plaintiff and the class members were on-duty meal
10 periods meaning they were not relieved of all duties.

11 19. As a result, Defendants are required to remit premium pay pursuant to Labor Code section
12 226.7 for each missed break, which is one additional hour of pay at the regular rate of pay.

13
14 SECOND CAUSE OF ACTION

15 Rest Period Violations

16 Against All Defendants

17 20. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

18 21. Pursuant to Wage Order 4 every employer shall authorize and permit employees to take rest
19 periods of ten minutes for every four hours worked.

20 22. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does
21 not provide an employee with the required rest period, the employer shall pay the employee one
22 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
23 not provided.

24 23. Plaintiff and the class members were denied rest periods as rest periods were not provided.

25 24. As a result of Defendants' rest period violations, Plaintiff and the class members are
26 entitled to premium pay which is one additional hour of compensation for each missed break.

27 ///

1 THIRD CAUSE OF ACTION

2 Overtime Violations

3 Against All Defendants

4 25. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

5 26. Plaintiff and the class members were required to work over eight hours in a day and/or 40
6 hours in a week without being compensated for all overtime in violation of Labor Code 510.

7 27. The reason for the violations is that Plaintiffs and the class members were not paid overtime
8 at the correct regular rate of pay; Plaintiffs and the class members received commissions that were
9 not calculated into the regular rate of pay.

10 28. The remedy for the overtime violations is payment of the unpaid overtime at the correct
11 regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

12
13 FOURTH CAUSE OF ACTION

14 Minimum Wage Violations

15 Against All Defendants

16 29. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

17 30. Plaintiff and the class members were required to work off the clock before and after their
18 scheduled shifts.

19 31. This off the clock work violated Labor Code sections 1194 and 1194.2.

20 32. As a result, Plaintiff and the class members are entitled to the unpaid minimum wages,
21 liquidated damages, interest, attorney fees, and costs.

22
23 FIFTH CAUSE OF ACTION

24 Wage Statement Penalties

25 Against All Defendants

26 33. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

27 34. Defendants' wage statements issued to the class member violated Labor Code section 226
28 since they did not list all hours worked at the correct rates of pay.

1 35. As a result, Plaintiff and the class members are entitled to wage statement penalties up to
2 \$4,000 each and attorney fees.

3
4 SIXTH CAUSE OF ACTION

5 Violation of Unfair Competition Law

6 Against All Defendants

7 36. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

8 37. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

9 38. This claim is being brought under the unlawful prong of the UCL.

10 39. Defendants violated the Labor Code and IWC Wage Order by not paying all overtime and
11 premium pay at the correct regular rate and not paying the minimum wage for off the clock work.

12 40. Plaintiffs and the class members are entitled to restitution pursuant to Business and
13 Professions Code section 17203.

14 41. Under Code of Civil Procedure section 1021.5, Plaintiffs are entitled to attorney fees.

15
16 SEVENTH CAUSE OF ACTION

17 PAGA Penalties

18 Against All Defendants

19 42. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

20 43. The PAGA penalties for the overtime violations are contained in Labor Code sections 558,
21 1197.1, and 2699.

22 44. The PAGA penalties for the meal break violations are contained in Labor Code sections 558
23 and 2699.

24 45. The PAGA penalties for the rest break violations are contained in Labor Code section 2699.

25 46. The PAGA penalties for the work expenditure reimbursement violations are contained in
26 Labor Code section 2699.

27 47. The PAGA penalties for the wage statement violations are contained in Labor Code 2699.

28 48. The PAGA penalties for the waiting time violations are contained in Labor Code 2699.

1 49. Further, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.

2
3 PRAYER

4 For All Causes of Action

5 1. That the court determine that this action may be maintained as a class action;

6 2. That Plaintiffs serve as representatives of the class;

7 3. That Counsel for Plaintiffs be appointed as class counsel.

8
9 First Cause of Action

10 1. Premium pay at the correct regular rate of pay

11 2. Other relief the court deems proper

12
13 Second Cause of Action

14 1. Premium pay at the correct regular rate of pay

15 2. Other relief the court deems proper

16 Third Cause of Action

17 1. Payment of overtime at the correct regular rate of pay

18 2. Attorney fees and costs

19 3. Interest

20 4. Other relief the court deems proper

21
22 Fourth Cause of Action

23 1. Payment of all off the clock work

24 2. Attorney fees and costs

25 3. Interest

26 4. Liquidated damages

27 5. Other relief the court deems proper

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1 Fifth Cause of Action

- 2 1. Wage statement penalties
3 2. Attorney fees and costs
4 3. Other relief the court deems proper
5

6 Sixth Cause of Action

- 7 1. Restitution of all unpaid wages and premium pay
8 2. Attorney fees and costs
9 3. Other relief the court deems proper
10

11 Seventh Cause of Action

- 12 1. All applicable PAGA penalties
13 2. Attorney fees and costs
14 3. Other relief the court deems proper
15

16 Date: June 23, 2023

FRONTIER LAW CENTER

17 *Adam Rose*

18 _____
19 Adam Rose
20 Attorney for Plaintiff
21 Michelle Velasquez
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