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on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

TIMOTHY O. VALDEZ, on behalf of himself
and current and former aggrieved employees

Plaintiff,

vs.

CHEVRON STATIONS, INC.; and DOES 1 to
100, inclusive,

Defendants.

Case No.: CVSW2303551

PAGA ACTION

**PLAINTIFF TIMOTHY O.
VALDEZ'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff TIMOTHY O. VALDEZ ("Plaintiff"), who alleges and
complains against Defendants CHEVRON STATIONS, INC.; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to authorize or permit
all legally required and/or compliant meal periods or pay meal period premium wages; statutory

1 penalties for failure to provide accurate wage statements; statutory waiting time penalties in the
2 form of continuation wages for failure to timely pay employees all wages due upon separation of
3 employment. Plaintiff seeks on a representative basis, following notice to the Labor and
4 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
5 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
6 others aggrieved.

7 **II. JURISDICTION AND VENUE**

8 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
9 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
10 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
11 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
12 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
13 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
14 aggrieved California-based hourly non-exempt employees occurred in locations throughout
15 California, including but not limited to Riverside County at 24625 Madison Ave, Murrieta,
16 California 92562.

17 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
18 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
19 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
20 tolled from April 6, 2020, until October 1, 2020.

21 **III. PARTIES**

22 4. Plaintiff brings this action as a representative of the Labor and Workforce
23 Development Agency on behalf of himself and other current and former employees subject to
24 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
25 filed include current, former and/or future employees of Defendants who work, worked, or will
26 work for Defendants as direct employees as well as temporary employees employed through temp
27 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
28 currently named Plaintiff is and was domiciled and a resident and citizen of California and was

1 employed by Defendants in an hourly position at Defendants' location in Riverside from in or
2 around September 7, 2017, until on or about July 19, 2022.

3 5. Plaintiff is informed and believes and thereon alleges that Defendant CHEVRON
4 STATIONS, INC. is authorized to do business within the State of California and is doing business
5 in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto
6 were persons acting on behalf of Defendant CHEVRON STATIONS, INC. in the establishment
7 of, or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
8 CHEVRON STATIONS, INC. operates in Riverside County and employed Plaintiff and aggrieved
9 employees in Riverside County, including but not limited to, at 24625 Madison Ave, Murrieta,
10 California 92562.

11 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
12 through 50 are corporations, or are other business entities or organizations of a nature unknown to
13 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
14 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
15 working conditions of employment of Plaintiff and aggrieved employees.

16 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
17 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
18 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
19 supervisor, independent contractor and/or employee of each defendant who violated or caused to
20 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
21 the Industrial Welfare Commission's wage orders regulating hours and days of work.

22 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
23 sues said defendants by said fictitious names, and will amend this complaint when the true names
24 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
25 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
26 named defendants is in some manner responsible for the events and allegations set forth in this
27 complaint.

28 9. Plaintiff makes the allegations in this complaint without any admission that, as to

any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants by Plaintiff)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, and the applicable Wage Orders.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

14. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

15. If an employer fails to provide an employee a meal period in accordance with the

1 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
2 for each workday that a legally required and compliant meal period was not provided. Labor Code
3 section 226.7; Wage Order 4 at §11.

4 16. Here, Plaintiff and similarly situated employees who were covered by Defendant's
5 "Employee On Duty Meal Period Agreement (CA, OR &WA)" worked shifts long enough to
6 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
7 practices, and/or procedures that resulted in their failure to provide meal periods to Plaintiff and
8 similarly situated employees who were covered by Defendant's "Employee On Duty Meal Period
9 Agreement (CA, OR &WA)" that were duty-free as required by law. Such policies, practices,
10 and/or procedures included, but were not limited to:

11 (a) Utilizing an on-duty meal period agreement to deprive Plaintiff similarly situated
12 employees who were covered by Defendant's "Employee On Duty Meal Period Agreement (CA,
13 OR &WA)" of duty-free meal breaks despite that the nature of their work does not prevent from
14 being relieved of all duty during meal breaks. Specifically, by its own terms, Defendant's
15 "Employee On Duty Meal Period Agreement (CA, OR &WA)" may be exercised unilaterally and
16 at the sole discretion of Defendant. Additionally, the on-duty meal period agreement
17 acknowledged that the nature of the work does not *always* prevent these employees from being
18 relieved of all duties during meal breaks. The fact that the on-duty meal break agreement could be
19 exercised from time to time at the discretion of Defendant coupled with the acknowledgment duty-
20 free meal breaks were possible, demonstrates that the nature of work did not prevent employees
21 from being relieved of all duty meal breaks, but rather was designed and implemented by
22 Defendant to avoid its legal obligations to 1) provide duty-free meal breaks to Plaintiff and
23 similarly situated employees covered by its "Employee On Duty Meal Period Agreement (CA, OR
24 &WA)" and 2) avoid the payment of a meal break premium wage on occasions Plaintiff and
25 similarly situated employees covered by its "Employee On Duty Meal Period Agreement (CA, OR
26 &WA)" miss their meal breaks.

27 17. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
28 procedure of failing to compensate Plaintiff and other current and former aggrieved California-

1 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
2 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
3 employees did not receive legally required and compliant meal periods, in violation of Labor Code
4 section 226.7.

5 18. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
6 and other current and former aggrieved California-based hourly non-exempt employees not
7 receiving wages to compensate them for workdays during which Defendants did not provide them
8 with meal periods in compliance with California law.

9 19. **Failure to timely pay earned wages during employment:** In California, wages
10 must be paid at least twice during each calendar month on days designated in advance by the
11 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
12 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
13 16th and the 26th day of that month and wages earned between the 16th and the last day,
14 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
15 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
16 paid within seven (7) calendar days following the close of the payroll period in which wages were
17 earned. Labor Code section 204(d).

18 20. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
19 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
20 exempt employees' earned wages (including meal period premium wages), in violation of Labor
21 Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in
22 their failure to pay Plaintiff's and other current and former aggrieved California-based hourly non-
23 exempt employees' their earned wages within the applicable time frames outlined in Labor Code
24 section 204.

25 21. **Failure to provide complete and accurate wage statements:** Labor Code section
26 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
27 employee his or her wages, the employer must "furnish each of his or her employees ... an
28 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the

1 employee, except for any employee whose compensation is solely based on a salary and who is
2 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
3 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
4 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
5 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
6 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
7 name of the employee and his or her social security number, (8) the name and address of the legal
8 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by the employee.”

10 22. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
11 and other current and former aggrieved California-based hourly non-exempt employees all wages
12 earned (including meal period premium wages) rendered Plaintiff’s and other current and former
13 aggrieved California-based hourly non-exempt employees’ wage statements inaccurate, in
14 violation of Labor Code section 226.

15 23. **Failure to pay employees all wages due at time of termination/resignation:** An
16 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
17 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
18 hours of resignation (Labor Code section 202).

19 24. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
20 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
21 all their earned wages (including meal period premium wages), Defendants failed to pay those
22 employees timely after each employee’s termination and/or resignation, in violation of Labor
23 Code sections 201, 202, and 203.

24 25. Defendants’ violations of Wage Order 4 constituted violations of Labor Code
25 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

26 26. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
27 employee, on behalf of himself or herself and other current or former employees, to bring a civil
28 action to recover civil penalties against all Defendants pursuant to the procedures specified in

1 Labor Code section 2699.3.

2 27. Plaintiff has complied with the procedures for bringing suit specified in Labor
3 Code section 2699.3. On February 27, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
4 and provided notice to Defendants by certified mail which provided notice of the specific
5 provisions of the Labor Code alleged to have been violated, including the facts and theories to
6 support the violations alleged.

7 28. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
8 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
9 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
10 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
11 to investigate Plaintiff's claims.

12 29. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
13 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512
14 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to
15 the present, in the following amounts:

16 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, one
17 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
18 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
19 violation [penalty amounts established by Labor Code section 2699(f)(2)].

20 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
21 for each employee for each pay period for the initial violation, and for each subsequent violation,
22 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
23 established by Labor Code section 226.3].

24 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
25 employee for each pay period for the initial violation, and for each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
27 established by Labor Code section 558] and any unpaid wages.

28 d. For violations of Labor Code section 1194 and 1197, one hundred dollars

1 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
2 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

4 30. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
5 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
8 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

9 **ON THE FIRST CAUSE OF ACTION:**

10 1. That Defendants be found to have violated the provisions of the Labor Code and
11 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

12 2. For any and all legally applicable penalties during the relevant statute of limitations
13 subject to any permissible tolling, including but not limited to those recoverable under the
14 California Labor Code, including but not limited to section 2699(f);

15 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
16 under California Labor Code section 2699(g); and

17 4. For such and other further relief, in law and/or equity, as the Court deems just or
18 appropriate

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20 Dated: May 4, 2023

Respectfully submitted,
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21
22 By:



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