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Attorneys for Plaintiff Ashley Avery, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

ASHLEY AVERY, on behalf of herself and all
“aggrieved employees” pursuant to Labor Code
§ 2698 *et seq.*,

Plaintiff,

v.

TAKLAK INC., a California corporation, and
DOES 1 through 10, inclusive,

Defendants.

CASE NO: CVCV23-00479

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 510, 512,
1194, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

1 Plaintiff ASHLEY AVERY (“Plaintiff”), on behalf of herself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of TAKLAK INC., a California corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants in California (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute all non-base hourly wages, including, but not
15 limited to, shift differential wages, earned by Plaintiff and other Aggrieved Employees into their
16 regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, and
17 sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.
18 Defendants paid Plaintiff and other Aggrieved Employees various non-base hourly wages, including,
19 but not limited to, shift differential wages; however, Defendants failed to properly blend these forms
20 of pay, and instead paid Plaintiff and other Aggrieved Employees meal and rest period premiums,
21 overtime wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving Plaintiff
22 and other Aggrieved Employees of all meal and rest period premiums, overtime wages, and sick pay
23 wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194;

24 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
25 denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-
26 2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a proper,
27 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
28 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten

1 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
2 period. When they were able to take a meal period, they were cut short, late or on-duty. Defendants
3 also failed to pay meal period premium wages at the correct rates of pay, as discussed above. This
4 violates Labor Code §§ 226.7, 512, 558, and 1198 and IWC Wage Order 4-2001;

5 c. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
6 were denied on-the-clock rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No.
7 4-2001. Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest period for
8 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
9 hour's pay for each missed rest period. Moreover, as discussed above, rest periods were never
10 compensated. Defendants also failed to pay rest period premium wages at the correct rates of pay, as
11 discussed above. When they were able to take a rest period, they were oftentimes late, cut short or
12 on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001;

13 d. Failing to provide Plaintiff and all other Aggrieved Employees with wage
14 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
15 Plaintiff and Aggrieved Employees were not paid all wages due, as stated above. As such, the wage
16 statements provided by Defendants failed to accurately state all gross wages earned, in violation of
17 Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and
18 226.3, all deductions, in violation of Labor Code §§ 226(a)(4) and 226.3, net wages earned, in
19 violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the
20 pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code
21 §§ 226(a)(9) and 226.3; and

22 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
23 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
24 stated above, Plaintiff and Aggrieved Employees were not paid all wages due during the course of
25 their employment and, as a result of this failure, they were not timely paid all wages due at the
26 separation of their employment. Further, when Plaintiff was terminated from her employment, she was
27 paid her final wages many days later. Plaintiff contends that Defendants maintain a practice of paying
28 their separated employees their final wages beyond the time frames required by Labor Code §§ 201

1 and 202. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and Aggrieved
2 Employees no longer employed by Defendant.

3 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
4 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

5 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
6 The Labor Code violations alleged against Defendants herein arose throughout California, including
7 in Yuba County.

8 II.

9 PARTIES

10 A. Plaintiff

11 5. Plaintiff ASHLEY AVERY was employed by Defendants as a non-exempt employee
12 from August 2021 through February 2023 in Yuba County, California.

13 B. Defendants

14 6. Defendant TAKLAK INC. is a California corporation that employed Plaintiff and
15 Aggrieved Employees in Yuba County, California.

16 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
18 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
19 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
20 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
21 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
22 designated hereinafter as DOES when such identities become known.

23 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
24 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
26 attributable to the other Defendants.

9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, and 1198; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On March 8, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of March 8, 2023. Plaintiff may therefore commence this action to seek civil penalties
2 pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as
4 described below.

5 **IV.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

- 8 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
9 Aggrieved Employees;
- 10 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
11 and other applicable law;
- 12 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
13 law; and
- 14 4. Such other and further relief as this Court may deem just and proper.

15 Dated: May 15, 2023

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

18 By: Daniel F. Gaines
19 DANIEL F. GAINES
20 EVAN S. GAINES
21 Attorneys for Plaintiff
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