

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Electronically FILED by
Superior Court of California,
County of Los Angeles
9/12/2023 6:18 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

Sahag Majarian, Esq. SBN 146621
sahagii@aol.com
Garen Majarian, Esq. SBN 334104
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff,
CLAUDIA GARCIA on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CLAUDIA GARCIA, an individual, on behalf
of herself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

LATARA ENTERPRISE, INC. DBA
FOUNDATION LABORATORY, a California
corporation and DOES 1-50, inclusive,

Defendant.

Case No.: **23STCV21976**

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 et seq.**

1 Plaintiff CLAUDIA GARCIA brings this PAGA representative action complaint on behalf
2 of herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff CLAUDIA GARCIA worked as an employee for Defendant LATARA
6 ENTERPRISE, INC. DBA FOUNDATION LABORATORY and Does 1-50 (collectively
7 “Defendant”). Defendant is a diagnostic laboratory. Plaintiff CLAUDIA GARCIA worked for
8 Defendant as an employee on an hourly, non-exempt basis as a phlebotomist until May 26, 2023.
9 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
10 Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly, non-exempt
11 employees of Defendant within one year of serving notice on the LWDA to the present are
12 aggrieved employees.

13 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
14 willful and intentional employment practices and policies. Plaintiff brings this representative
15 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
16 California, based upon the claims articulated below. Plaintiff provided notice of her claims
17 pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
18 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
19 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
20 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
21 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

22 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to pay
24 split shift pay; (4) failing to provide reporting time pay; (5) failing to pay wages due upon
25 termination; (6) failing to provide rest breaks; (7) failing to provide uninterrupted meal breaks; (8)
26 failing to reimburse for required business expenses; (9) failing to provide accurate itemized wage
27 statements and maintain accurate records. Defendant is therefore liable for civil penalties under
28

1 the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698
2 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 4. Plaintiff CLAUDIA GARCIA is a resident of the State of California and worked for
5 Defendant until May 26, 2023.

6 5. Defendant LATARA ENTERPRISE, INC. DBA FOUNDATION LABORATORY is a
7 California corporation authorized to do business and doing business in California with the capacity
8 to sue and to be sued, and doing business, in the county of Los Angeles, State of California.

9 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
10 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
11 informed and believes and thereon alleges that said Defendant is legally responsible for the
12 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
13 will amend this complaint when their true names and capabilities are ascertained.

14 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
15 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
16 of the representative class, and exercised control over their wages, hours, and working conditions.
17 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
18 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
20 to the other Defendants.

21 **JURISDICTION AND VENUE**

22 8. Venue is proper in this judicial district because Defendant conducts business in this
23 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
24 in this case that arose in this county.

25 9. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
26 the Superior Court and will be established according to proof at trial. Based on information,
27 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
28

monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

10. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

11. During the relevant time-period, Defendant committed various violations of the California Labor Code as alleged below in more detail. Defendant enforces multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

12. This representative action represents over one hundred current and former aggrieved employees.

13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendant engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

14. Plaintiff and all current and former hourly, non-exempt employees within one year of filing this action to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

15. Defendant, and each of them, has committed the following violations of the California Labor Code:

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4)

16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

17. Section 2(K) of Wage Order 4 defines "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Defendant has been engaged in many unlawful

1 employment practices which resulted in underpayment for hours worked each pay period as
2 described below.

3 18. Off the Clock Work. Plaintiff has worked at numerous locations on behalf of
4 Defendant. Because Defendant staffs medical professionals at numerous locations, they often
5 contact employees hours before their scheduled shift to let them know what location the employee
6 is required to report to. For example, Plaintiff's supervisor messages her hours before her shift is
7 set to start to let her know that day's location. This time spent communicating with the employee
8 is unpaid.

9 19. Plaintiff and aggrieved employees are able to clock in using their personal phones
10 (which are not reimbursed) or on the office computers. However, prior to clocking in, the employee
11 must first turn on the computer and start up the program, which always leads to delays. Plaintiff
12 explains that when she attempts to log in using company computers, it takes her 5 minutes just to
13 upload the computer, which is unpaid.

14 20. Work Performed During Unpaid Meal Periods. As more fully set forth below,
15 Defendant failed to permit Plaintiff and others to take timely, off-duty meal breaks of "not less
16 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and
17 512. Plaintiff is often the only employee working as a phlebotomist at a time, resulting in
18 constantly interrupted meal periods. Aggrieved employees were also required to work while
19 clocked out for lunch. Plaintiff was frequently interrupted when on her lunch break but was not
20 permitted to report this time worked on her timecard.

21 21. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
22 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
23 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
24 unlawful employment policies and practices discussed herein. As a result of these practices,
25 Plaintiff and aggrieved employees were underpaid for hours worked, including overtime and
26 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
27 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
28 by law.

(Cal. Labor Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

23. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Failure to Pay Split Shift Pay

25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

27. Here, Defendant required Plaintiff and her coworkers to communicate with Defendant a few hours prior to each shift on days scheduled to work. The block of unpaid time between the required communication and the assigned shift is longer than one hour and is not a designated meal

1 period. Plaintiff and aggrieved employees work regular split shifts but do not receive split shift
2 pay in the corresponding pay period.

3 28. Moreover, as a derivative claim, Plaintiff alleges that her pay statements were
4 inaccurate as they failed to indicate required split shift wages, thus failing the requirements of
5 Labor Code §226(a) and liable under 226.3. Defendant is further liable for civil penalties pursuant
6 to Cal. Labor Code §2698 *et. seq.*

7 **Failure to Provide Reporting Time Pay**

8 (Cal. Labor Code §§1198, Wage Order)

9 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 30. Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled
12 to reporting time pay if that employee is required to report to work and does report but is not put
13 to work or is furnished less than half of said employee's usual or schedule workday. The amount
14 of reporting time that must be paid "is half the usual or scheduled day's work, but in no event for
15 less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..." *Id.*

16 31. The reporting time provision of the Applicable Wage Orders were meant to safeguard
17 against unpredictable work schedules that understandably take a toll on affected employees.
18 Without the security of definite work schedules, employees are forced to make childcare
19 arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience
20 adverse financial effects, and deal with the stress and strain on their family life. Defendant required
21 employees to remain on call, carry a communication device, and report to work at the assigned
22 location within only hours of being told where to report. If an employee was called off and told
23 not to report to work, they were not paid for reporting time despite the fact that they were required
24 to report to and communicate with their employer.

25 **Failure to Pay Wages Due Upon Termination**

26 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

27 32. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 33. An employee who is discharged must be paid all of his or her wages immediately at
2 the time of termination. (Labor Code Sections 201 and 227.3.) Defendant knowingly and willfully
3 failed to pay all compensation due and owing to aggrieved employees at the time employment
4 terminated. Defendant willfully failed to pay employees who are no longer employed by it all
5 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
6 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
7 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
8 Cal. Lab. Code § 2698 *et. seq.*

9 **Failure to Provide Rest Breaks**

10 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

11 34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 35. Defendant has failed to maintain a compliant rest period policy and practice that
14 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
15 that she almost always missed rest periods as a result of Defendant's staffing and business
16 practices, and that rest breaks were not scheduled into daily shifts.

17 36. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
18 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
19 prescribed by California law because Defendant: (1) did not account for all hours worked that were
20 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
21 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
22 inform and train employees about when, where and how to take timely and uninterrupted ten-
23 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
24 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
25 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
26 break policy.

27 37. Defendant did not authorize or permit all of its hourly employees to take at least a ten
28 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major

fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

(Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

39. During Plaintiff's employment, Defendant failed to maintain a compliant meal period policy and practice. Defendant failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

40. Plaintiff and aggrieved employees experienced frequent meal period violations. Although meal periods were one hour long, they are frequently interrupted due to understaffing and the constant flow of patients in the healthcare environment. Plaintiff explains that on most days, her meal break was either late, short, or interrupted.

41. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal

1 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
2 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
3 and aggrieved employees were not paid a premium payment, paid as an hour's wage when meal
4 periods were not given to them in compliance with California law.

5 **Failure to Reimburse For Required Business Expenses**

6 (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*)

7 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 43. Labor Code §2802 requires employers to indemnify employees for necessary
10 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
11 Plaintiff and aggrieved employees were required to use their personal cell phones for work
12 purposes for clocking in and out and communicating with Defendant prior to each shift. Plaintiff
13 and aggrieved employees were never reimbursed for this expense.

14 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**
15 **Requirements**

16 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

17 44. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 45. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
20 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
21 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
22 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
23 actual total hours worked, meal and rest period penalties, and wages earned. Additionally, the total
24 hours worked is calculated incorrectly, including retroactive pay, sick pay, vacation, and other
25 forms of pay in the total hours calculation.

26 46. Such failures caused injury to Plaintiff and others, by, among other things, impeding
27 them from knowing the total hours worked and the amount of wages to which they are and were
28 entitled. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

1 47. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
2 employees to sign employment related contracts and documents that contained unlawful terms of
3 employment.

4 **FIRST CAUSE OF ACTION**

5 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

6 **(California Labor Code §2698 *et seq.*)**

7 48. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
8 incorporate said paragraphs herein by reference.

9 49. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by Defendant
10 during the applicable statutory period and suffered one or more of the Labor Code violations set
11 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
12 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
13 attorneys’ fees and costs.

14 50. Plaintiff seeks to recover the PAGA civil penalties through a representative action
15 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
16 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

17 51. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
18 Code provisions:

- 19 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
20 Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194,
21 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4);
- 22 b. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
23 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- 24 c. Failure to Pay Split Shift Pay (Cal. Labor Code §§1198 and 2698 *et seq.*);
- 25 d. Failure to Provide Reporting Time Pay (Cal. Labor Code §§1198, Wage Order)
- 26 e. Failure to Pay Wages Due Upon Termination (Cal. Labor Code §§201, 202, 203,
27 256 and 2698 *et seq.*)
- 28

- 1 f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
2 2698 *et seq.*)
- 3 g. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
4 558, 1198, 2699 *et seq.*)
- 5 h. Failure to Reimburse For Required Business Expenses (Cal. Labor Code §§1198,
6 2802, 2699 *et seq.*)
- 7 i. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
8 Records (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

9 52. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
10 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
11 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
12 employee for each subsequent violation of Labor Code §226(a).

13 53. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
14 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
15 for each underpaid employee for each pay period for which the employee was underpaid, and one
16 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
17 for which the employee was underpaid.

18 54. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
19 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
20 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
21 a civil penalty is not specifically provided.

22 55. Plaintiff and the other current and former employees of Defendant are aggrieved
23 employees. They were or are employed by Defendant, and each of them, and the violations alleged
24 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
25 current and former aggrieved employees.

26 56. At the time of each violation, Defendant employed one or more employees.
27
28

1 57. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
2 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
3 determined at trial, pre-judgment interest, costs and attorneys' fees.

4 58. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
5 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
6 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
7 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
8 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
9 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
10 §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved
11 employees and the State of California.

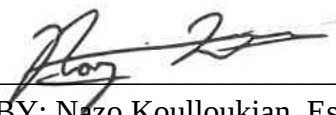
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
14 judgement against Defendant as follows:

- 15 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
16 determined at trial, but at least the jurisdictional amount of this Court;
- 17 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
18 and/or other applicable law;
- 19 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
20 law;
- 21 4. Pre-judgement and post-judgement interest as provided by law; and
- 22 5. Such other and further relief that the Court may deem just and proper.
- 23

24 DATED: September 12, 2023

KOUL LAW FIRM

25
26 

27 BY: Nazo Koulloukian, Esq.
28 Attorneys for Plaintiff CLAUDIA GARCIA, and all
aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 28, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

LATARA ENTERPRISE, INC.
1716 W HOLT AVE
POMONA, CA 91768

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Claudia Garcia
Employer: LATARA ENTERPRISE, INC. DBA FOUNDATION
LABORATORY

Dear Sir or Madam:

Claimant Claudia Garcia has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian, II, and Garen Majarian of the Majarian Law Group APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, LATARA ENTERPRISE, INC. DBA FOUNDATION LABORATORY (hereafter “Employer”).

Employer is a California corporation doing business as Foundation Laboratory providing clinical laboratory services. Claimant worked for Employer as an hourly, non-exempt phlebotomist until May 26, 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4)

Section 2(K) of Wage Order 4 defines “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below.

Off the Clock Work

Claimant has worked at numerous locations on behalf of Employer. Because Employer staffs medical professionals at numerous locations, they often contact employees hours before their scheduled shift to let them know what location the employee is required to report to. For example, Claimant’s supervisor messages her hours before her shift is set to start to let her know that day’s location. This time spent communicating with the employee is unpaid.

Claimant and aggrieved employees are able to clock in using their personal phones (which are not reimbursed) or on the office computers. However, prior to clocking in, the employee must first turn on the computer and start up the program, which always leads to delays. Claimant explains that when she attempts to log in using company computers, it takes her 5 minutes just to upload the computer, which is unpaid.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant is often the only employee working as a phlebotomist at a time, resulting in constantly interrupted meal periods. Aggrieved employees were also required to work while clocked out for lunch. Claimant was frequently interrupted when on her lunch break but was not permitted to report this time worked on her timecard.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for

hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Split Shift Pay

(Cal. Lab. Code §§1198 and 2698 *et seq.*)

Labor Code §1198 prohibits the employers from subjecting employees to "conditions of labor prohibited by the order." Wage Order 5-2001 (4C), codified at 8 C.C.R. § 11070(4C), requires that, "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment."

Here, Employer required Claimant and her coworkers to communicate with Employer a few hours prior to each shift on days scheduled to work. The block of unpaid time between the required communication and the assigned shift is longer than one hour and is not a designated meal period. Claimant and aggrieved employees work regular split shifts but do not receive split shift pay in the corresponding pay period.

Moreover, as a derivative claim, Claimant alleges that her pay statements were inaccurate as they failed to indicate required split shift wages, thus failing the requirements of Labor Code §226(a) and liable under 226.3. Employer is further liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Provide Reporting Time Pay
(Cal Labor Code § 1198, Wage Order)

Pursuant to the Subsection 5(A) of the Applicable Wage Orders, an employee is entitled to reporting time pay if that employee is required to report to work and does report but is not put to work or is furnished less than half of said employee's usual or schedule workday. The amount of reporting time that must be paid "is half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay..." *Id.*

The reporting time provision of the Applicable Wage Orders were meant to safeguard against unpredictable work schedules that understandably take a toll on affected employees. Without the security of definite work schedules, employees are forced to make childcare arrangements, eldercare arrangements, encounter obstacles in pursuing their education, experience adverse financial effects, and deal with the stress and strain on their family life. Employer required employees to remain on call, carry a communication device, and report to work at the assigned location within only hours of being told where to report. If an employee was called off and told not to report to work, they were not paid for reporting time despite the fact that they were required to report to and communicate with their employer.

Failure to Pay Wages Due Upon Termination
(Cal. Lab. Code §§201, 202, 203, 256 and 2698 et seq.)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks
Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she almost always missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty,” or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.” Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees experienced frequent meal period violations. Although meal periods were one hour long, they are frequently interrupted due to understaffing and the constant flow of patients in the healthcare environment. Claimant explains that on most days, her meal break was either late, short, or interrupted.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Claimant and aggrieved employees were required to use their personal cell phones for work purposes for clocking in and out and communicating with Employer prior to each shift. Employees were never reimbursed for this expense.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual total hours worked, meal and rest period penalties, and wages earned. Additionally, the total hours worked is calculated incorrectly, including retroactive pay, sick pay, vacation, and other forms of pay in the total hours calculation.

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal line extending to the right.

Nazo Koulloukian, Esq.
Attorneys for Claimant

Cc:

Sahag Majarian, II
Garen Majarian, Esq.
Majarian Law Group
18250 Ventura Blvd.
Tarzana, CA 91356