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Attorneys for Plaintiff OLIVER ACENAS, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

OLIVER ACENAS, on behalf of himself and
all other Aggrieved Employees,

Plaintiff,

v.

ORGANIC BY NATURE, INC., a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No. **24STCV00155**

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

1 Plaintiff, OLIVER ACENAS (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other
3 current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of himself and other Aggrieved Employees, to collect
7 civil penalties for Defendant’s Labor Code violations.

8 2. Defendants and employers, Organic By Nature, Inc., (“Defendants”), violated
9 numerous wage and hour laws with respect to Plaintiff and other Aggrieved Employees by failing
10 to provide, for example: accurate and itemized wages statements, payment for all hours worked
11 (including regular wages and overtime), failure to provide a minimum wage, lawful meal
12 periods, lawful rest periods, timely payment during employment, failure to reimburse for
13 expenses incurred during the course and scope of employment, and payment upon separation of
14 employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff is, and at all times herein mentioned was, a resident of California,
18 currently residing in Los Angeles, County.

19 4. Aggrieved Employees are all former and/or current non-exempt employees
20 holding various positions and employed by Defendant within California during the relevant time
21 period who were subject to at least one or more Labor Code violations set forth in the PAGA
22 Notice dated October 18, 2023, and attached hereto as **Exhibit A** (“Aggrieved Employees”).

23 **The Defendants**

24 5. Defendant Organic By Nature, Inc., is a California corporation which, at all
25 relevant times mentioned herein, existing, doing business and employing individuals in the
26 County of Los Angeles, State of California. Plaintiff is informed and thereon alleges that
27 Defendant exercised control over Plaintiff and Aggrieved Employees’ wages, hours, and working
28 conditions.

1 6. Defendant Organic By Nature, Inc., is a California corporation which, at all
2 relevant times mentioned herein, existing, doing business and employing individuals in the
3 County of Los Angeles, State of California. Plaintiff is informed and thereon alleges that
4 Defendant exercised control over Plaintiff and Aggrieved Employees' wages, hours, and working
5 conditions.

6 7. The true names and capacities, whether individual, corporate, associate, or
7 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
8 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
9 amend this Complaint to insert the true names and capacities of said Defendants when the same
10 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
11 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
12 therefore liable to Plaintiff as alleged hereinafter.

13 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times
14 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
15 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
16 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
17 least in part within the course and scope of said agency, employment, conspiracy, joint
18 employment, alter ego status, and/or joint venture and with the permission and consent of each of
19 the other Defendants.

20 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
21 and each of them, including those Defendants named DOES 1-50, acted in concert with one
22 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
23 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
24 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
25 each of them, including those Defendants named as DOES 1-50, formed and executed a
26 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
27 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
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1 to and actually causing Plaintiff harm.

2 10. Whenever and wherever reference is made in this Complaint to any act or failure
3 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
4 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

5 **JURISDICTION AND VENUE**

6 11. Venue is proper in Los Angeles County, because Defendant maintains its
7 locations and transacts business in this county, the obligations and liability primarily arise in this
8 county, and work was primarily performed by Plaintiff and other Aggrieved Employees in this
9 county.

10 12. The California Superior Court has jurisdiction over this matter. The individual
11 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
12 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
13 amount required for diversity removal. Further, there is no federal question at issue as the issues
14 herein are based solely on California statutes and law, including, but not limited to, the California
15 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
16 and California Rules of Court.

17 **GENERAL ALLEGATIONS**

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19 13. Defendant specializes in organic green products, organic vegan protein, meal
20 replacements, superfoods, herbal / botanical supplements and other popular nutraceutical
21 products. Defendant employed Plaintiff and Aggrieved Employees in California during the
22 relevant PAGA period. Aggrieved Employees are all former and/or current non-exempt
23 employees holding various positions and employed by Defendant within California during the
24 relevant time period who were subject to at least one or more Labor Code violations set forth in
25 the PAGA Notice dated October 18, 2023 and attached hereto as **Exhibit A**

26 14. Plaintiff was employed by Defendant as a Quality Control Technician from about
27 April 2018 to August 7, 2023. Plaintiff's primary duties include conducting various tests per
28 manufacturing and/or quality control batch records, environmental monitoring, water testing,

maintaining standard operating procedures, auditing, quality control, investigating and documenting customer complaints.

15. The position required Plaintiff to work more than 8 hours a day and/or 40 hours per week without lawful compensation. Plaintiff and Aggrieved Employees were regularly not paid for minimum wages and overtime for compensable work time spent under the control of Defendant, including off-the-clock work which was in excess of regularly scheduled, eight-hour daily shifts.

16. Plaintiff and Aggrieved Employees were subject to not having all their compensable work time recorded due to Defendant's lack of adequate staffing. Not all of Plaintiff and Aggrieved Employees' compensable work time spent under the control of Defendant was accounted for and compensated. Specifically, Plaintiff is informed and believes that Defendant (1) adjusted clock in and clock out times to the disadvantage of Plaintiff and other Aggrieved Employees by rounding up clock-in times when Plaintiff and Aggrieved Employees clocked-in before the scheduled start of their respective shifts and rounded down clock-out times when Plaintiff and Aggrieved Employees worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff and Aggrieved Employees to continue working when ostensibly on duty-free meal periods, or requiring them to return to work before the end of their thirty-minute meal periods but prohibiting them from clocking back in until the legally required thirty-minute mark.

17. Based on information and belief, Plaintiff believes he and Aggrieved Employees were also not being reimbursed for all necessary expenses incurred in the performance of their job duties. Specifically, Defendant required Plaintiff and Aggrieved Employees, regardless of classification, to use their personal cellular telephones to communicate with colleagues and supervisors in the course of performing their respective duties but failed to reimburse them for use of the personal cellular devices nor the consumption of personal. Specifically, Plaintiff used their cellphone to communicate with his supervisors after his shift had ended and during his regular employment schedule.

1 18. Defendant failed to authorize and permit all required meal and rest periods for
2 Plaintiff and Aggrieved Employees because, upon information and belief, Defendant maintained
3 unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendant
4 regularly did not staff enough employees to provide sufficient coverage to maintain their
5 business operations so Plaintiff and Aggrieved Employees could not both complete their
6 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
7 Defendant prioritized completion of daily duties and customer satisfaction ahead of meal and
8 rest period compliance. Defendant failed to provide Plaintiff and Aggrieved Employees with an
9 additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as
10 required by Labor Code section 226.7.

11 19. As a result of the violations described above, Plaintiff and Aggrieved Employees
12 experienced collateral or derivative violations. Specifically, Defendant failed to provide Plaintiff
13 and Aggrieved Employees accurate itemized wage statements in writing in compliance with
14 Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for all
15 wages owed at the time employment with Defendant had ended.

16 20. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
17 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
18 departments, divisions, commissions, boards, agencies or employees for violation of the code
19 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
20 behalf of himself and other current or former employees pursuant to the procedures specified in
21 Labor Code section 2699.3.

22 21. For all provisions of the Labor Code except those for which a civil penalty is
23 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
24 penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
25 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
26 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.
27

28 22. Defendant's conduct during the PAGA period with respect to Plaintiff and

1 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

2 23. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
3 hour violations under the California Labor Code and IWC Wage Orders.

4 24. At all relevant times herein, Defendant employed Plaintiff and Aggrieved
5 Employees who were subject to the employment policies described herein, in whole or in part,
6 and therefore suffered at least one or more of the violations set forth herein.

7 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
8 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
9 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
10 they were not receiving all wages earned for work that was required to be performed. In violation
11 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
12 Employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
13 Employees all earned minimum, regular, and/or overtime compensation.

14 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
15 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
16 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
17 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
18 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
19 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
20 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
21 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
22 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
23 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

24 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
26 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
27 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
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1 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
2 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
3 pay to Plaintiff and Aggrieved Employees for each rest periods were not provided or was
4 interrupted. As a result of Defendant's unlawful policy and practice, Plaintiff and Aggrieved
5 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
6 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
7 uninterrupted 10 minute off-duty rest period.

8 28. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
9 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
10 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
11 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
12 time periods, upon separation of employment.

13 29. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
14 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
15 wage statements that accurately showed their actual hours worked, total hours worked, number
16 of hours worked at each hourly rate, gross and net wages earned, and correct employer
17 information in accordance with California law. As a result of the wage violations specified
18 above, and in violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided
19 with accurate itemized wage statements that accurately reported their gross and net wages
20 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
21 corresponding number of hours worked, and the address of the legal entity that is the employer,
22 among other things.

23 30. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
24 should have known that Defendant was required to maintain accurate records of the hours
25 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendant failed
26 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
27 off-the-clock and/or unfair rounding practices, among other things.
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36. California Labor Code §§2698-2699.5, in relevant part provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

37. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil penalties for Defendant's Labor Code violations.

First Violation

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

38. Under California Labor Code §512(a), “An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

39. Defendant violated Labor Code § 512 by failing to provide Plaintiff and Aggrieved Employees who worked shifts of greater than five hours, uninterrupted and/or timely meal periods within the first five hours of the shifts worked. Defendant failed to pay Plaintiff one hour's pay at Plaintiff's regular rate of pay for each day Defendant failed to provide a meal period in compliance with section 512.

Second Violation

(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)

40. Under California Labor Code §226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

41. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle

1 of each work period. The authorized rest period time shall be based on the total hours worked
2 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

3 42. Defendant failed to authorize and permit Plaintiff and Aggrieved Employees to
4 take rest periods and mandated by the Wage Order.

5 43. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
6 one additional hour of pay at the employee’s regular rate of compensation for each workday that
7 the meal or rest or recovery period is not provided.”

8 44. Defendant failed to pay Plaintiff and Aggrieved Employees who were not
9 provided rest periods one hour of pay at their regular rate of pay.

10 **Third Violation**

11 **(Failure to Provide Complete and Accurate Wage Statements,**
12 **in Violation of Labor Code Section 226)**

13 45. Under California Labor Code §226(a), an employer is legally obligated to provide
14 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
15 in writing...”

16 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
17 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
18 Labor Code § 2699.

19 **Fourth Violation**

20 **(Failure to Pay Overtime Wages)**

21 47. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
22 employer is required to compensate employees for all overtime, which is calculated at one and
23 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
24 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
25 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
26 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
27 any workweek.
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48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Fifth Violation

(Failure to Pay Minimum Wages)

49. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Sixth Violation

(Failure to Timely Pay Wages During Employment)

51. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, an employer is required to pay its employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendant was required to pay their employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Seventh Violation

(Failure to Pay All Wages Due to Discharged and Quitting Employees)

53. Pursuant to California Labor Code § 201, 202, and 203, Defendant is required to

1 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
2 201 mandates that if an employer discharges an employee, the employee's wages accrued and
3 unpaid at the time of discharge are due and payable immediately.

4 54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
5 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
6 Labor Code § 2699.

7 **Eighth Violation**

8 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

9 **(Against all Defendants and DOES 1 to 50, inclusive)**

10 55. Labor Code § 2802 provides that an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
13 the employer.

14 56. Defendants failed to indemnify and reimburse Plaintiff for all necessary
15 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
16 job duties.

17 57. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
18 incurred as a result of discharging his duties, including interest.

19 58. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
20 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
21 Labor Code § 2699.

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Dated: January 3, 2024

WORK LAWYERS PC

14

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE October 18, 2023

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California Labor &
Workforce Development Agency
PAGAfilings@dir.ca.gov

ORGANIC BY NATURE, INC.
Human Resources / Legal Department
2610 Homestead Place
Rancho Dominguez, CA 90220

Gregory Clement
Agent for Service of Process for
Organic By Nature, Inc.
2020 Main Street, Suite 600
Irvine, CA 92614

SUBJECT ACENAS, OLIVER v. ORGANIC BY NATURE, INC. —NOTICE OF LABOR CODE
VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear PAGA Administrator:

This office represents OLIVER ACENAS (“Complainant”) in connection with claims under the California Labor Code. Complainant is a former employee of ORGANIC BY NATURE, INC., a corporation doing business in California (“Employer” or “Organic By Nature”). Pursuant to Labor Code section 2699.3, subdivision (a), we are providing written notice that Employer is in violation of various provisions of the California Labor Code.

Complainant intends to file a complaint against Employer in California Superior Court pursuant to Labor Code section 2699 on behalf of himself and all Aggrieved Employees within one year of the filing of the original PAGA notice.

“Aggrieved Employees” are all non-exempt workers employed by Employer within California holding various positions who experienced at least one or more of the violations set forth in this notice.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If Employer intends to cure the alleged violations within the statutory time period set forth in Labor Code sections 2699(d) and 2699.3(c), the Employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, Complainant will commence a civil action pursuant to Section 2699.

The Employer

Employer and its agents own, operate, or otherwise manage a business known as Organic By Nature, Inc. According to the California Secretary of State’s website, Employer is a business registered in California on or about May 4, 2020. Organic By Nature is in the business of manufacturing dietary supplements.

Employer may be contacted directly through its agent for service of process at:

Gregory Clement
Agent for Service of Process for
Organic By Nature, Inc.
2020 Main Street, Suite 600
Irvine, CA 92614

The business and mailing address listed for Employer with the California Secretary of State is as follows:

ORGANIC BY NATURE, INC.
2610 Homestead Place
Rancho Dominguez, CA 90220

Complainant is informed and believes and thereon alleges that Employer employs, at a minimum, 100 or more Aggrieved Employees who are non-exempt employees at its California locations at any given time. Specifically, it is believed that at any given time, Employer has approximately 100 or more persons employed and working in various positions such QC technician, lab technician, QC specialist, and QC auditor.

Factual Background

Complainant was employed by Employer from approximately April 2018 to about August 7, 2023 as a nonexempt employee. Complainant was initially hired as a QC technician, and through various position changes, Complainant was promoted to a QC auditor / project coordinator. Complainant's general duties included conducting various tests per manufacturing and/or quality control batch records, environmental monitoring, water testing, maintaining standard operating procedures, auditing, quality control, investigating and documenting customer complaints. At the time of termination, Complainant was paid approximately \$26.50 per hour.

On occasions, Complainant worked more than 8 hours a day and/or 40 hours per week without lawful compensation.

Complainant worked off-the-clock when he was required to respond to work-related text messages from his supervisors after his shift had ended or during his meal or rest breaks. Complainant was not paid minimum, regular, or overtime wages for these off-the-clock work. Complainant is informed and believes that Aggrieved Employees suffered the same violation and were not paid for off-the-clock work.

Moreover, Complainant is informed and believes that Complainant and Aggrieved Employees were subject to an unlawful time rounding policy for their compensable work time. In particular, Complainant is informed and believes that his time was rounded to the nearest quarter which does not accurately reflect and account for all compensable time worked by Complainant and

Aggrieved Employees, thereby, depriving Complainant and Aggrieved Employees of minimum, regular, and overtime wages.

Employer failed to authorize and permit all required meal and rest periods for Complainant and Aggrieved Employees because upon information and belief, Employer maintained unlawful meal and rest period policies and practices. Complainant and Aggrieved Employees did not receive full, timely, and uninterrupted meal and rest breaks as required by the Labor Code. Complainant often did not receive his 30-minute meal break within the first five hours of his shift. Complainant also believes that Aggrieved Employees who worked more than 10 hours per day did not receive a second meal break.

Complainant is further informed and believes that Employer regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Complainant and Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks. Employer failed to provide Complainant and aggrieved employees with an additional hour of premium pay at the regular rate of pay for each rest period violation, as required by Labor Code section 226.7.

Complainant is informed and believes that Employer failed to reimburse Complainant and Aggrieved Employees for all expenses incurred in the direct discharge or performance of their work duties. Complainant and Aggrieved Employees were required to use their personal cellular telephones and internet connection to perform their job duties. For instance, Complainant and Aggrieved Employees were required to communicate with his supervisor via text messages on work-related matters such as updating them about issues that arose, update them about any problems, and answering any questions the supervisors may have. Complainant and Aggrieved Employees did not receive reimbursement for use of his or her personal cellphone.

As a result of these violations, Complainant and Aggrieved Employees did not receive accurate itemized wage statements reflecting all wages owed including meal and rest breaks premiums and off-the-clock work. The above-described violations also triggered waiting time penalties that were not paid to Complainant and Aggrieved Employees at the termination of employment.

Legal Violations

At all relevant times, Complainant and Aggrieved Employees were non-exempt employees working for Employer. At all relevant times, Complainant was an Aggrieved Employee as defined in Labor Code section 2699, subdivision (c). (Lab. Code, § 2699, subd. (c) [“any person

who was employed by the alleged violator and against whom one or more of the violations was committed”].)

Complainant’s employment resulted in numerous violations of the California Labor Code, including the following:

- ▶ Employer failed to keep accurate and complete time records for Complainant and Aggrieved Employees. (Lab. Code, §§ 1174, 1198, 1199; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Every employer shall keep accurate information with respect to each employee including the following: . . . Time records showing when the employee begins and ends each work period.”].)
- ▶ Employer failed to pay Complainant and Aggrieved Employees for all hours worked. (Lab. Code, § 1197; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage].)
- ▶ Employer failed to pay Complainant and Aggrieved Employees at least minimum wage for all hours worked or overtime rates for overtime work. (Lab. Code, §§ 1194, 1197, 1197.1.)
- ▶ Employer failed to pay Complainant and Aggrieved Employees overtime equal to one and one-half times their regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)
- ▶ Employer failed to pay Complainant and Aggrieved Employees overtime equal to double their regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh

consecutive day or work in a work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)

- ▶ Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ▶ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ▶ Employer failed to maintain a company rest break policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ▶ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ▶ Employer failed to properly record Complainant and Aggrieved Employees' meal periods as required by Labor Code section 1198 and applicable IWC Wage Orders. (Lab. Code, § 1198; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) ["Meal periods, split shift intervals and total daily hours worked shall also be recorded."].)
- ▶ Employer failed to pay Complainant and Aggrieved Employees all wages earned by Complainant and Aggrieved Employees on at least semimonthly paydays. (Labor Code, §§ 204, subd. (a), 207.)

- ▶ Employer refused to make and/or falsely denied the amount of payments due to Complainant and Aggrieved Employees. (Lab. Code, § 216; see also Lab. Code, §§ 1174, 1197, 1197.1, 1198, 1199, 2699.)
- ▶ Employer intentionally and willfully failed to provide proper and accurate wage statements to employees Complainant and Aggrieved Employees. (Lab. Code, §§ 226, subd. (a), 226.3, 226.6.) The deficiencies include, among other things, the correct gross wages, the correct number of regular hours and overtime hours worked, and meal and rest break premiums.
- ▶ Employer failed to provide proper notices regarding employee pay to Complainant and Aggrieved Employees. (Lab. Code, § 2810.5.)
- ▶ Employer failed to pay employees all earned and unpaid wages when they separated/separate from employment. (Lab. Code, §§ 201, 202, 203, 210.)
- ▶ Employer refused to reimburse Complainant and Aggrieved Employees for all expenses incurred during the course and scope of their employment. (Lab. Code, § 2802.)

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. Complainant and other Aggrieved Employees seek to recover those amounts.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency ("LWDA") setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699 and 2699.3, subdivision (a), prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the Labor Commissioner or LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of himself and all other California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within **sixty (60) days** of this notice to our office and to that of other charged parties.

If you have any questions, please contact me at the phone number or address below:

Justin Lo
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22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505
Tel: (424) 355-8335
Email: Justin@caworklawyer.com

Thank you for your attention to this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,


JUSTIN LO