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**Via E-filing:**

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

**Via Certified U.S. Mail:**

Crown Poly, Inc.  
5700 Bickett Street  
Huntington Park, CA 90255

Re: PAGA Notice Pursuant to California Labor Code §2699  
Claimants: Maria Cardenas De Montes  
Employer: Crown Poly, Inc.

Dear Sir or Madam:

Claimant Maria Cardenas De Montes has retained Nazo Koulloukian, Esq. of the Koul Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Crown Poly, Inc. (hereafter “Employer”). Claimant worked as a direct employee for Employer from 1996 until April of 2023 as an hourly, non-exempt employee in Employer’s manufacturing facility.

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 §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 1)

Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

#### **Off-the-Clock Hours Worked- Waiting in Required Lines**

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Numerous employees came on shift at the same time which resulted in many employees waiting in required lines to clock in for work to use the timeclock. Claimant recalls waiting around 3 minutes in line to clock in for each shift. The time clock was also a significant walk from the break room resulting in additional unpaid time prior to clock in. This time spent walking and waiting in required lines was required by Employer prior to each shift and when clocking back in for lunch, and was essential and required before employees could begin and/or resume working on the clock.

Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

#### **Failure to Pay Overtime, Penalty Pay and Sick Pay at Regular Rate of Pay**

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer paid nondiscretionary production and other bonuses to Claimant and aggrieved employees but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime, penalty pay, or sick pay. It is well established that non-discretionary bonuses retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay that is partly

due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime, penalty, or sick pay rates to incorporate the additional pay, and this failure is reflected in Claimant and aggrieved employees' paystubs. Claimant and other employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Employer also failed to pay Claimant's last production bonus when she left employment.

#### 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 due to being required to wait in long lines to clock back in at the end of each meal period and the long, unpaid walks from the break area to the timeclock. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

#### **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, in addition to failure to pay meal and rest period penalty wages. 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 Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

**Failure to Properly Calculate and Pay Sick Leave Wages**

(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l), especially in light of the production and other nondiscretionary bonuses received by employees. Therefore wages remain owed and unpaid under Labor Code section 204.

**Failure to Pay All Wages Owed Twice Per Month**

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

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 these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

### **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.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer failed to pay Claimant her last production bonus at the time her employment terminated in April 2023.

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 and her co-workers had to walk long distances from the work area to the break room of at least two minutes each way, resulting in 6-minute rest breaks. Additionally, 3<sup>rd</sup> rest breaks were never provided.

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 & Second Meal Breaks**

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *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 frequently short and interrupted meal periods. Employees were forced to take noncompliant meal periods that were less than 30 minutes in length because employees were required to walk excessive distances from the timeclock to the breakroom and back off the clock, and had to wait in long lines to use the timeclock prior to resuming work. Employees were also consistently denied second meal periods.

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; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy, and/or (6) because Employer used invalid meal period waivers. 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. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

### **Failure to Properly Accrue and Pay for Unpaid Vacation**

(Cal. Lab. Code §227.3 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this case, Employer failed to pay all accrued vacation wages to Claimant and aggrieved employees upon termination. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, Employer required Claimant and aggrieved employees to purchase their own tools required to successfully complete their jobs, including wrenches and bars, but failed to reimburse Claimant and employees as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et eq.*

### **Failure to Provide Safe Working Conditions** **(Cal. Labor Code §1198, Wage Order)**

Employer’s workplaces would get unsafely hot in the summer and Employer lacked adequate climate control facilities, often providing only a fan to circulate the hot air instead of cooling it off.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Claimant explains that it would often get unbearably hot and Employer refused to provide adequate climate control or necessary apparel to keep employees comfortable and to protect their health.

By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

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

(Cal. Labor Code §§ 226, 246, 248, 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). Wage statements issued to Claimant and aggrieved employees do not state the correct total hours worked, overtime rate of pay, penalty rate of pay, or sick pay rate.

Claimant's final wage statement failed to include all wages owed to her, including her production bonus.

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, as well as the correct rate of pay for overtime and penalty pay. Employer knowingly and intentionally failed to list all the items described above. 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 the above claims as a representative action in civil court.

Respectfully submitted,

  
Nazo Koulloukian, Esq.  
Attorneys for Claimant