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MARIA CARDENAS DE MONTES,
and all putative class members

FILED
Superior Court of California
County of Los Angeles

01/05/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIA CARDENAS DE MONTES, an
individual, on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

CROWN POLY, INC., a California
corporation and DOES 1-50, inclusive,

Defendant.

Case No.: 23STCV24729

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Failure to Pay for All Hours Worked
Including Overtime Hours Worked**
- 2. Failure to Pay Minimum Wage**
- 3. Failure to Properly Calculate and Pay
Sick Leave Wages**
- 4. Failure to Pay All Wages Owed Twice
Per Month**
- 5. Failure to Pay Wages Due Upon
Termination**
- 6. Failure to Provide Rest Breaks**
- 7. Failure to Provide Uninterrupted
Meal Breaks & Second Meal Breaks**
- 8. Failure to Properly Accrue and Pay
for Unpaid Vacation**
- 9. Failure to Reimburse for Required
Business Expenses**
- 10. Paystub and Record Keeping
Violations**
- 11. Unlawful Business Practices
Bus & Prof. Code §17200**
- 12. Private Attorneys General Act
Penalties §2698 et seq**

JURY TRIAL DEMANDED

1 Plaintiff MARIA CARDENAS DE MONTES, individually, and on behalf of all others
2 similarly situated all aggrieved employees, and as a Private Attorney General for the State of
3 California (collectively “Plaintiff”), alleges as follows:

4 NATURE OF THE ACTION

5 1. This is an employment class action on behalf of over 100 hourly, non-exempt employees
6 against their employer for violations of numerous wage and hour laws. Plaintiff brings this
7 employment class action complaint on behalf of himself, and all others similarly situated, all
8 aggrieved employees, and as a Private Attorney General for the State of California against
9 CROWN POLY, INC., and DOES 1-50, inclusive, (hereafter collectively “Defendant” or
10 “Defendants”).

11 2. Defendant is a sustainable bag producer in California. Plaintiff worked as a direct
12 employee for Defendant from 1996 until April of 2023 as an hourly, non-exempt employee in
13 Defendant’s manufacturing facility.

14 3. As described further below, Defendant has violated the California Labor Code by (1)
15 failing to pay for all hours worked, including overtime hours worked (§200, 204, 206, 206.5, 207,
16 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, Wage Order 1); (2)
17 failing to pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199);
18 (3) failing to properly calculate and pay sick leave wages (§246); (4) failing to pay all wages owed
19 twice per month (§204, 210); (5) failing to pay wages due upon termination (§201, 202, 203, 256);
20 (6) failing to provide rest breaks (§226, 226.7, 512, 558, 1198); (7) failing to provide uninterrupted
21 meal breaks and second meal breaks (§226, 226.7, 512, 558, 1198); (8) failing to properly accrue
22 and pay for unpaid vacation (§227.3); (9) failing to reimburse for required business expenses; (10)
23 failing to provide accurate itemized wage statements and violating record keeping requirements
24 (§226, 246, 248, 1174, 1174.5) and; (11) unlawful and unfair business practices (Bus. & Prof.
25 Code §17200, et. seq). Plaintiffs further allege that Defendants are liable for civil penalties under
26 the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq.

27 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)
28 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period

1 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and
2 reasonable attorneys' fees and costs. Pursuant to the class action procedures provided for under
3 California law, Plaintiff, on behalf of himself, proposed Class Members and aggrieved employees
4 (also referred to as "Class"), also seeks injunctive relief and restitution of all benefits Defendant
5 has received from their unlawful actions as alleged herein. Plaintiffs have also provided notice of
6 these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development Agency
7 ("LWDA") and now brings this First Amended Complaint, including claims for civil penalties
8 under the Private Attorneys General Act ("PAGA"), Labor Code §2698 et seq. Attorney General
9 Act ("PAGA"), Labor Code §2698 et seq.

10 5. The "Class Period" is designated as the four-year period prior to the filing of this
11 Complaint through the date of final disposition of this action. From the start of the Class Period
12 through the present, Defendant has had a policy and/or practice of among other violations: late
13 and/or interrupted meal breaks, untimely and/or interrupted rest breaks, not reimbursing required
14 business expenses, issuing inaccurate wage statements, and ignoring and violating California wage
15 and hour laws, and workplace safety laws, in their business as more fully set forth below.

16 6. The "PAGA Period" is defined herein commences one year prior to the date of filing the
17 PAGA Notice letter with the LWDA.

18 7. Defendant has treated all persons employed in California in such a way as to violate
19 California's laws governing conditions of employment and payment of wages owed. Plaintiff
20 asserts that Defendant has knowingly and with conscious disregard of the law refused to pay the
21 Class Members and aggrieved employees all wages owed, including overtime wages and meal and
22 rest break penalty wages. Defendant has violated numerous Labor Code provisions, as set forth
23 herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or
24 premiums and penalties under Business and Professions Code section 17203 to compensate Class
25 Members and aggrieved employees for the delay in receiving wages due.

26 8. Defendant, by and through their actions, have engaged in unfair competition, requiring
27 restitution to persons affected and disgorgement of profits so obtained.
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THE PARTIES

9. Plaintiff MARIA CARDENAS DE MONTES is an individual who resides in California and worked for Defendant.

10. Defendant CROWN POLY, INC. is a corporation doing business in California with the capacity to sue and to be sued and doing business, in Los Angeles County, State of California. CROWN POLY, INC. exercised control over the wages, hours, and/or working conditions of Plaintiff, aggrieved employees and members of the proposed class throughout the liability period.

11. Defendant Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, aggrieved employees and the Class Members herein alleged were proximately caused by such Doe Defendant.

12. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

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JURISDICTION AND VENUE

13. Venue is proper in this judicial district because Defendant conducts business in this County and Defendant has legal obligations to Plaintiff, aggrieved employees and many of the Class Members in this case that arose in this county.

14. The monetary damages, restitution and statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in

controversy, including claims for monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars (\$25,000) and less than five million dollars (\$5,000,000).

15. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is incorporated in and/or 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.

CLASS AND REPRESENTATIVE ACTION ALLEGATIONS

16. During the Class Period, Defendant committed various violations of the California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more detail. Defendant enforces multiple policies that violate state law which are intended to increase its own profits to the detriment of its employees.

17. Plaintiff, aggrieved employees and the putative class are employees of Defendant.

18. Defendants failed to (1) pay for all hours worked, including overtime hours worked (§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, Wage Order 1); (2) pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (3) properly calculate and pay sick leave wages (§246); (4) pay all wages owed twice per month (§204, 210); (5) pay wages due upon termination (§201, 202, 203, 256); (6) provide rest breaks (§226, 226.7, 512, 558, 1198); (7) provide uninterrupted meal breaks and second meal breaks (§226, 226.7, 512, 558, 1198); (8) properly accrue and pay for unpaid vacation (§227.3); (9) reimburse for required business expenses; (10) provide accurate itemized wage statements and violating record keeping requirements (§226, 246, 248, 1174, 1174.5). These practices also constitute unlawful and unfair business practices. These policies and practices have deprived Plaintiffs, Class Members, and Aggrieved Employees of payment for all hours worked, and further damages, as set forth below, and render Defendants liable for damages, including penalties under PAGA..

19. Failure to pay for all hours worked. Plaintiff was denied payment for all hour hours worked, resulting from Defendant's practices of requiring employees to wait in lines to clock in for work to use the timeclock. Plaintiff recalls waiting around 3 minutes in line to clock in for each

1 shift. The time clock was also a significant walk from the break room resulting in additional
2 unpaid time prior to clock in. This time spent walking and waiting in required lines was required
3 by Defendant prior to each shift and when clocking back in for lunch, and was essential and
4 required before employees could begin and/or resume working on the clock. Defendant paid
5 nondiscretionary production and other bonuses to Plaintiff and class members but failed to include
6 the additional pay when calculating the regular rate of pay for purposes of calculating overtime,
7 penalty pay, or sick pay. Defendant also failed to pay Plaintiff's last production bonus when she
8 left employment. Defendant also failed to pay Plaintiff and aggrieved employees for work
9 performed during unpaid meal periods.

10 20. Minimum Wage. Defendant failed to pay Plaintiff and class members for all hours
11 worked as a result of Defendant's practices described above, in addition to failure to pay meal and
12 rest period penalty wages. Based on Defendant's unlawful conduct described above, and because
13 Plaintiff and the class members were paid at or near minimum wage, employer's failure to pay for
14 all hours worked, including overtime, resulted in a payment of less than the minimum wage for all
15 hours worked.

16 21. Sick Leave Wages. Plaintiff and class members were paid sick leave wages at their
17 base hourly rates of pay, which is less than required under either of the two alternative methods of
18 calculation provided by Labor Code section 246(l), especially in light of the production and other
19 nondiscretionary bonuses received by employees. Therefore wages remain owed and unpaid under
20 Labor Code section 204.

21 22. Failure to Pay All Wages Owed Twice Per Month. Defendant failed to pay all wages
22 earned to employees as a result of the unlawful employment policies and practices discussed
23 herein. As a result of these practices, Employees were underpaid for hours worked, including
24 overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed
25 twice per month.

26 23. Failure to Pay All Wages Due Upon Termination. Defendant willfully failed to pay
27 employees who are no longer employed by it all compensation due upon termination of
28 employment.

1 24. Rest breaks. Defendant failed to maintain a policy and practice that provides its
2 employees with off-duty rest periods as required by California law.

3 25. Meal breaks. During Plaintiff's employment, Defendant failed to maintain a compliant
4 meal period policy and practice. Defendant failed to provide all hourly employees with their right
5 to take an off-duty unpaid 30-minute meal period.

6 26. Unpaid Vacation. Defendant failed to pay all accrued vacation wages to Plaintiff and
7 class members upon termination.

8 27. Business Expenses. Defendant required Plaintiff and class members to purchase their
9 own tools required to successfully complete their jobs, including wrenches and bars, but failed to
10 reimburse Plaintiff and employees.

11 28. Safe and Healthful Work Conditions. Employer's workplaces would get unsafely hot
12 in the summer and Employer lacked adequate climate control facilities, often providing only a fan
13 to circulate the hot air instead of cooling it off.

14 29. Inaccurate Wage Statements. Defendant further failed to provide timely, accurate,
15 itemized wage statements to Plaintiff, aggrieved employees and the Class Members, as well as
16 maintain accurate records, in accordance with Labor Code §§ 226 and 1174.

17 30. Unfair Business Practices. Based upon the above allegations, Defendant engaged in
18 unfair competition.

19 **CALIFORNIA CLASS ACTION ALLEGATIONS**

20 31. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,
21 to recover from Defendant for failure to comply with California wage and hour laws, and for claims
22 under Business and Professions Code § 17200.

23 32. This action has been brought and may properly be maintained as a class action
24 pursuant to the provisions of Code of Civil Procedure § 382 because the proposed class is
25 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100
26 employees who have been similarly injured by Defendant's unlawful employment policies and
27 practices.
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1 33. The “Relevant Time Period” or proposed “Class Period” as defined herein commences
2 four years prior to the date of filing this Complaint.

3 34. The “PAGA Period” is defined herein commences one year prior to the date of filing
4 the PAGA Notice letter with the LWDA.

5 35. The PAGA Class, also referred to herein as “aggrieved employees”: “All current and
6 former hourly, non-exempt employees of Defendants in California, at any time from one year
7 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter.”
8 Plaintiffs reserve the right to amend or modify the definition of aggrieved employees with
9 respect to the issues or in any other way.

10 36. Plaintiff brings this action on their behalf and as a class action under Cal. Code of
11 Civil Procedure §382 on behalf of the following defined groups:

12 37. Proposed Class: “All persons who are employed or have been employed by Defendant
13 in the State of California as hourly, non-exempt workers during the period of the relevant statute
14 of limitations.”

15 38. Proposed Sub-classes are defined as follows:

- 16 A. All persons who are employed or have been employed by Defendant in the State
17 of California as hourly, non-exempt workers during the period of the relevant
18 statute of limitations, who worked one or more shift in excess of five (5) hours.
- 19 B. All persons who are employed or have been employed by Defendant in the State
20 of California as hourly, non-exempt workers during the period of the relevant
21 statute of limitations, who worked one or more shifts in excess of six (6) hours.
- 22 C. All persons who are employed or have been employed by Defendant in the State
23 of California as hourly, non-exempt workers during the period of the relevant
24 statute of limitations, who worked one or more shifts in excess of eight (8)
25 hours.
- 26 D. All persons who are employed or have been employed by Defendant in the State
27 of California as hourly, non-exempt workers during the period of the relevant
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1 statute of limitations, who worked one or more shifts in excess of three and one-
2 half hours (3 ½), but less than or equal to six (6) hours.

3 E. All persons who are employed or have been employed by Defendant in the State
4 of California as hourly, non-exempt workers during the period of the relevant
5 statute of limitations, who worked one or more shifts in excess of six (6) hours,
6 but less than or equal to ten (10) hours.

7 F. All persons who are employed or have been employed by Defendant in the State
8 of California as hourly, non-exempt workers during the period of the relevant
9 statute of limitations, who separated their employment from Defendant.

10 G. All persons who are employed or have been employed by Defendant in the State
11 of California as hourly, non-exempt workers during the period of the relevant
12 statute of limitations, who received pay for one or more pay periods.

13 39. This action is brought, and may properly be maintained, as a class action under CCP
14 §382 because there is a well-defined community of interest in the litigation, and the proposed Class
15 and Subclasses (collectively “Class”) are easily ascertainable.

16 40. Numerosity: The Proposed Class is so numerous that joinder of all members is
17 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant
18 time period, Defendant employed over 100 putative Class Members who are geographically
19 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only
20 available method for the fair and efficient adjudication of this controversy. Membership in the
21 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll
22 records, among other records within Defendant’s possession and control.

23 41. Typicality: Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff,
24 like others similarly situated, was subjected to Defendant’s common, unlawful policies, practices,
25 and procedures described above. The Plaintiff’s positions at the company was typical of those of
26 other Class Members. Plaintiff’s claims are typical of the claims of each Class Member because
27 each have sustained damages arising out of and caused by Defendant’s common course of conduct,
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1 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the
2 Class.

3 42. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of
4 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and
5 California labor and employment litigation.

6 43. Commonality: Common questions of law and fact exist, including but not limited to
7 the following:

- 8 i. Whether Defendant violated wage and hour laws by failing to pay overtime
9 wages;
- 10 ii. Whether Defendant violated wage and hour laws by failing to pay minimum
11 wage;
- 12 iii. Whether Defendant violated wage and hour laws by failing to properly accrue
13 and pay sick leave wages;
- 14 iv. Whether Defendant violated wage and hour laws by failing to pay all wages
15 owed twice per month;
- 16 v. Whether Defendant violated wage and hour laws by failing to pay all wages
17 due upon termination;
- 18 vi. Whether Defendant violated wage and hour laws by failing to provide rest
19 breaks;
- 20 vii. Whether Defendant's policy and practice concerning rest breaks was
21 unlawful;
- 22 viii. Whether Defendant violated wage and hour laws by failing to uninterrupted
23 meal breaks and second meal breaks;
- 24 ix. Whether Defendant's policy and practice concerning meal breaks was
25 unlawful;
- 26 x. Whether Defendant violated wage and hour laws by failing to properly accrue
27 and pay for unpaid vacation;
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- 1 xi. Whether Defendant violated wage and hour laws by failing to reimburse for
2 required business expenses;
- 3 xii. Whether Defendant unlawfully failed to keep and furnish Class Members
4 with accurate, itemized records of hours worked, in violation of Labor Code
5 §§ 226 and 1174;
- 6 xiii. The proper measure of damages sustained and the proper measure of
7 restitution recoverable by Plaintiff, the Class Members, and Subclass
8 Members;
- 9 xiv. Whether the Class Members are entitled to injunctive relief to enjoin any
10 further violations of wage and labor laws;
- 11 xv. Whether Defendant, and each of them, are/were participants in the alleged
12 unlawful and/or tortious conduct;
- 13 xvi. Whether Defendant's conduct was willful and reckless;
- 14 xvii. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff
15 Class and the appropriate amount of reimbursement, restitution, damages, or
16 other compensation; and
- 17 xviii. What is the extent of liability of each Defendant, including DOE defendants,
18 to each Class and Subclass member?

19 44. Superiority: A class action is superior to other available methods of the fair and
20 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
21 where the damage suffered by individual plaintiffs, while not inconsequential, makes individual
22 actions impracticable given the expenses and burdens associated with seeking individual relief.
23 Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity
24 and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning
25 employees who rely on their wages and requiring that each individual take time away from work
26 to prosecute individual actions would be inequitable and result in undue hardship for the individual
27 Class members and their families. Public policy favors efficient resolution of their claims and
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uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

45. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendant's corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

46. Plaintiff requests, pursuant to Rule 1857(a)(l) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendant.

FIRST CAUSE OF ACTION

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, Wage Order 1

(Plaintiff Against All Defendants)

47. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

48. Defendant's conduct described in this complaint violates the provisions of Labor Code §§ 200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, Wage Order 1.

49. 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 Plaintiff 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. Defendant 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. Defendant has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

50. Off-the-Clock Hours Worked- Waiting in Required Lines. Plaintiff and class members frequently worked off the clock and were routinely subjected to periods wherein they were under the Defendant'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. Plaintiff 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 Defendant 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. Defendant has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1.

51. 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." Defendant paid nondiscretionary production and other bonuses to Plaintiff and class members 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,

1 increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169
2 CA4th 804, 807.)

3 52. Defendant did not make any adjustments to overtime, penalty, or sick pay rates to
4 incorporate the additional pay, and this failure is reflected in Plaintiff and class members' paystubs.
5 Plaintiff and other employees have been denied "the unpaid balance of the full amount of this...
6 overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Defendant has
7 violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
8 Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation
9 of the labor code to fail to comply with a wage order. Defendant also failed to pay Plaintiff's last
10 production bonus when she left employment. /

11 53. Work Performed During Unpaid Meal Periods. As more fully set forth below,
12 Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of "not less
13 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and
14 512 due to being required to wait in long lines to clock back in at the end of each meal period and
15 the long, unpaid walks from the break area to the timeclock. Plaintiff and class members have been
16 employed under conditions prohibited by the wage order, and thus Defendant has also violated
17 §§1198 and 1199.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGE**

20 Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199

21 (Plaintiff Against All Defendants)

22 54. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 55. Defendant's conduct described in this complaint violates the provisions of Labor Code
25 §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199.

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

1 57. Defendant failed to pay Plaintiff and class members for all hours worked as a result of
2 Defendant's practices described above, in addition to failure to pay meal and rest period penalty
3 wages. Based on Defendant's unlawful conduct described above, and because Plaintiff and the
4 class members were paid at or near minimum wage, employer's failure to pay for all hours worked,
5 including overtime, resulted in a payment of less than the minimum wage for all hours worked, in
6 violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B).

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PROPERLY CALCULATE AND PAY SICK LEAVE WAGES**

9 Cal. Lab. Code §§246

10 (Plaintiff Against All Defendants)

11 58. Plaintiff incorporates by reference in this cause of action each allegation of the
12 preceding paragraphs as though fully set forth herein.

13 59. Defendant's conduct described in this complaint violates the provisions of Labor Code
14 §§ 246.

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

17 **A.** Paid sick time for nonexempt employees shall be calculated in the same manner
18 as the regular rate of pay for the workweek in which the employee uses paid
19 sick time, whether or not the employee actually works overtime in that
20 workweek; [or]

21 **B.** Paid sick time for nonexempt employees shall be calculated by dividing the
22 employee's total wages, not including overtime premium pay, by the
23 employee's total hours worked in the full pay periods of the prior 90 days of
24 employment.

25 Labor Code § 246 (l)

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27 61. Plaintiff and class members were paid sick leave wages at their base hourly rates of
28 pay, which is less than required under either of the two alternative methods of calculation provided

1 by Labor Code section 246(l), especially in light of the production and other nondiscretionary
2 bonuses received by employees. Therefore wages remain owed and unpaid under Labor Code
3 section 204.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES OWED TWICE PER MONTH**

6 Cal. Lab. Code §§204, 210

7 **(Plaintiff Against All Defendants)**

8 62. Plaintiff incorporates by reference in this cause of action each allegation of the
9 preceding paragraphs as though fully set forth herein.

10 63. Defendant's conduct described in this complaint violates the provisions of Labor Code
11 §§ 204, 210.

12 64. Defendant was required to pay Plaintiff and class members all wages earned twice
13 during each calendar month pursuant to Labor Code §204(a).

14 65. Defendant failed to pay all wages earned to employees as a result of the unlawful
15 employment policies and practices discussed herein. As a result of these practices, Employees
16 were underpaid for hours worked, including overtime and penalty wages, and this underpayment
17 resulted in a failure to pay all wages owed twice per month.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES DUE UPON TERMINATION**

20 Cal. Lab. Code §§201, 202, 203, 256

21 **(Plaintiff Against All Defendants)**

22 66. Plaintiff incorporates by reference in this cause of action each allegation of the
23 preceding paragraphs as though fully set forth herein.

24 67. Defendant's conduct described in this complaint violates the provisions of Labor Code
25 §§ 201, 202, 203, 256.

26 68. An employee who is discharged must be paid all of his or her wages immediately at
27 the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Defendant
28 knowingly and willfully failed to pay all compensation due and owing to Plaintiff at the time

1 employment terminated. Defendant failed to pay Plaintiff her last production bonus at the time her
2 employment terminated in April 2023.

3 69. Defendant willfully failed to pay employees who are no longer employed by it all
4 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
5 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
6 waiting time under the terms of §203.

7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE REST BREAKS**

9 Cal. Lab. Code §§226, 226.7, 512, 558, 1198

10 **(Plaintiff Against All Defendants)**

11 70. Plaintiff incorporates by reference in this cause of action each allegation of the
12 preceding paragraphs as though fully set forth herein.

13 71. Defendant's conduct described in this complaint violates the provisions of Labor Code
14 §§ 226, 226.7, 512, 558, 1198.

15 72. Defendant has failed to maintain a compliant rest period policy and practice that
16 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
17 that she and her co-workers had to walk long distances from the work area to the break room of at
18 least two minutes each way, resulting in 6-minute rest breaks. Additionally, 3rd rest breaks were
19 never provided.

20 73. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
21 duty", or not scheduled before and after a meal period for shifts greater than six hours, as
22 prescribed by California law because Defendant: (1) did not account for all hours worked that were
23 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
24 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
25 inform and train employees about when, where and how to take timely and uninterrupted ten-
26 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
27 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
28

1 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
2 break policy.

3 74. Defendant did not authorize or permit all of its hourly employees to take at least a ten
4 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
5 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 11(A). When
6 breaks were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant
7 violated the Wage Order, Defendant is liable under Labor Code §1198.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS AND SECOND MEAL**
10 **BREAKS**

11 Cal. Lab. Code §§226, 226.7, 512, 558, 1198

12 (Plaintiff Against All Defendants)

13 75. Plaintiff incorporates by reference in this cause of action each allegation of the
14 preceding paragraphs as though fully set forth herein.

15 76. Defendant's conduct described in this complaint violates the provisions of Labor Code
16 §§ 226, 226.7, 512, 558, 1198.

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

27 78. Plaintiff and class members frequently short and interrupted meal periods. Employees
28 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.

79. 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 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 Defendant 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.

EIGHTH CAUSE OF ACTION

FAILURE TO PROPERLY ACCRUE AND PAY FOR UNPAID VACATION

Cal. Lab. Code §§227.3

(Plaintiff Against All Defendants)

80. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

81. Defendant's conduct described in this complaint violates the provisions of Labor Code §§ 227.3.

82. 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 her as wages at his final rate." In this case, Defendant failed to pay all accrued vacation wages to Plaintiff and class members upon termination.

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FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES

(Plaintiff Against All Defendants)

84. Defendant's conduct described in this complaint violates the provisions of Labor Code §§ 2802.

TENTH CAUSE OF ACTION

(Plaintiff Against All Defendants)

87. Defendant's conduct described in this complaint violates the provisions of Labor Code §§ 226, 246, 248, 1174, 1174.5.

FIRST AMENDED COMPLAINT - 20

1 and were entitled, as well as the correct rate of pay for overtime and penalty pay. Defendant
2 knowingly and intentionally failed to list all the items described above.

3 89. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and class
4 members to sign employment-related contracts and documents that contained unlawful terms of
5 employment.

6 **ELEVENTH CAUSE OF ACTION**

7 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

8 California Business and Professions Code section 17200, et seq.

9 **(Plaintiff Against All Defendants)**

10 90. Plaintiff incorporates by reference in this cause of action each allegation of the
11 preceding paragraphs as though fully set forth herein.

12 91. Defendant knowingly committed, and upon information and belief continue to commit,
13 ongoing unlawful business practices within the meaning of the UCL, including, but not limited to
14 unlawful practices as described in the causes of action articulated above, and hereby incorporated
15 herein.

16 92. Plaintiff lost money and property as a result of Defendant's unlawful business practices
17 described above.

18 93. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of
19 money or property acquired by Defendant by means of such unlawful business practices, in
20 amounts not yet known, but to be ascertained at trial.

21 94. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief
22 against Defendant's ongoing unlawful business practices. If an injunction does not issue enjoining
23 Defendant from engaging in the unlawful business practices described above, Plaintiff and the
24 general public will be irreparably injured.

25 95. Plaintiff has no plain, speedy, and adequate remedy at law. Defendant, if not enjoined
26 by this Court, will continue to engage in the unlawful business practices described above in
27 violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of the general
28 public.

1 96. Plaintiff's success in this action will result in the enforcement of important rights
2 affecting the public interest by conferring a significant benefit upon the general public.

3 97. Defendant's numerous violations of local and California law, as well as the other
4 statutory and regulatory violations alleged herein, constitute unlawful business actions and
5 practices in violation of Business and Professions Code § 17200, et seq.

6 Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class Members are
7 entitled to restitution of unpaid wages and penalty pay, among other relief alleged herein, that were
8 withheld and retained by Defendant during a period that commences four years prior to the filing
9 of this action. Plaintiff is further entitled to a permanent injunction requiring Defendant to comply
10 with all provisions of California labor law, including properly paying the lawful rate of pay for all
11 hours worked, providing rest periods to all workers as defined herein, timely paying due wages
12 upon termination, maintaining accurate wages statements and payroll records, in addition to an
13 award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5 and other
14 applicable law, and costs.

15 **TWELFTH CAUSE OF ACTION**

16 STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT,
17 LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

18 98. Plaintiffs incorporate by reference in this cause of action each allegation of the
19 preceding paragraphs as though fully set forth herein.

20 99. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an
21 aggrieved employee, on behalf of themselves and other current or former employees, may recover
22 penalties under any provision of the Labor Code that provides for civil penalties. These penalties
23 are in addition to any other relief available under the Labor Code. Plaintiffs are aggrieved
24 employees under PAGA.

25 100. Defendant's workplaces would get unsafely hot in the summer and Employer lacked
26 adequate climate control facilities, often providing only a fan to circulate the hot air instead of
27 cooling it off. The Wage Orders require:
28

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

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

7 101. Plaintiff explains that it would often get unbearably hot and Defendant refused to
8 provide adequate climate control or necessary apparel to keep employees comfortable and to
9 protect their health. By violating the wage order, Defendant is liable for civil penalties pursuant to
10 §2698 *et. seq.*

11 102. As set forth above, Defendants have committed numerous violations for which the
12 Labor Code provides for penalties, including violations of all applicable Labor Code provisions
13 set forth in the foregoing causes of action. Labor Code §2699.5 identifies the aforementioned
14 Labor Code provisions as statutes to which §2699.3's procedural requirements must be met before
15 a penalty may be assessed under §2699(f). Plaintiffs have complied with the procedural
16 requirements specified in §2699.3 by providing written notice to the Defendants and the Labor &
17 Workforce Development Agency ("LWDA"). See Exhibit 1 attached hereto, which is a true and
18 correct copy of the Notice correspondence showing compliance with §2699.3. No notice of intent
19 to investigate the alleged violations was provided within the statutory period. Consequently,
20 Plaintiffs have exhausted administrative remedies, and on behalf of themselves and all other
21 aggrieved current and former employees of Defendants. Plaintiffs, therefore, now pursue this cause
22 of action as permitted by §2698, *et seq.*

23 103. Enforcement of statutory provisions enacted to protect workers and to ensure proper
24 and prompt payment of wages due to employees is a fundamental public interest in California.
25 Consequently, Plaintiffs' success in this action will result in the enforcement of important rights
26 affecting the public interest and will confer a significant benefit upon the general public. Private
27 enforcement of the rights enumerated herein is necessary, as no public agency has pursued
28 enforcement. Plaintiffs have incurring a financial burden in pursuing this action and it would be

1 against the interests of justice to require payment of attorneys' fees and costs from any recover
2 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of
3 Civil Procedure §1021.5

4 104. In addition, if Plaintiffs succeed in enforcing these rights affecting the public interest,
5 then attorneys' fees may be awarded to Plaintiffs and against Defendants under Code of Civil
6 Procedure §1021.5 and other applicable law in part, because:

7 105. A successful outcome in this action will result in the enforcement of important rights
8 affecting the public interest by requiring Defendants to comply with the wage and hour laws and
9 California's unfair business practice law;

10 106. This action will result in a significant benefit to Plaintiffs, the Class, and the general
11 public by bringing to a halt unlawful and/or unfair activity;

12 107. Unless this action is prosecuted, members of the Class and general public will not
13 recover those moneys, and many of Defendants' employees would not be aware that the acts and
14 practices they were subjected to by Defendants were wrongful;

15 108. Unless this action is prosecuted, Defendants will continue to mislead their employees
16 about the true nature of their rights and remedies under the wage and hour laws; and
17 An award of attorneys' fees and costs is necessary for the prosecution of this action and will result
18 in a benefit to Plaintiffs, the Class, aggrieved employees, and to consumers in general, by
19 preventing Defendants from continuing to circumvent the wage and hour statutes and frustrate the
20 long-standing recognition by the California legislature and the courts that such statutes, as pled
21 herein, are not merely a matter of private concern between employer and employee to be
22 eviscerated by considerations of waiver, contributory negligence, good or bad faith, and private
23 agreements. Rather, the wage and hour statutes have been described as a matter of public concern,
24 were designed to provide minimum substantive guarantees to individual workers and are essential
25 to public welfare.

26 REQUEST FOR RELIEF

27 WHEREFORE, Plaintiff, on behalf of himself and the Proposed Class, request judgment
28 and the following specific relief against Defendant as follows:

- 1 A. That the Court determine that this action may be maintained as a class action
2 under Code of Civil Procedure § 382;
- 3 B. That the Court determine that this action may be maintained as a PAGA
4 representative action under Cal. Labor Code. §2698 *et seq.*
- 5 C. Provision of class notice to all members of the Class;
- 6 D. That Defendant is found to have violated the above-referenced provisions of the
7 Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members,
8 relevant subclass Members and aggrieved employees.
- 9 E. For compensatory damages, in an amount according to proof at trial, with
10 interest thereon;
- 11 F. For compensation for not being paid overtime;
- 12 G. For compensation for not being paid minimum wage;
- 13 H. For compensation for not being paid all wages owed twice per month;
- 14 I. For compensation for not paid all wages due upon termination;
- 15 J. For compensation for not being provided proper rest breaks;
- 16 K. For compensation for not being provided proper meal breaks and second meal
17 breaks;
- 18 L. For compensation for not being paid for unpaid vacation wages;
- 19 M. For compensation for not being paid for required business expenses;
- 20 N. That Defendant's actions are found to be willful and/or in bad faith to the extent
21 necessary under §§ 201, 202, 203, and 558 of the California Labor Code for
22 willful failure to pay all compensation owed at the time of separation to
23 Plaintiff, Class Members and aggrieved employees no longer employed by
24 Defendant;
- 25 O. That Plaintiff, Class Members and aggrieved employees receive penalties for
26 Defendant's violation of §226 and 1174 of the California Labor Code for willful
27 failure to provide and maintain the required accurate and itemized wage
28 statements;

- 1 P. That Plaintiff, Class Members and aggrieved employees receive an award in the
2 amount of unpaid wages owed, including interest thereon, and penalties as
3 provided in the Labor Code, CCR and Wage Order, including under Labor Code
4 §§ 203, 510, and 558, subject to proof at trial;
- 5 Q. That Plaintiff, Class Members and aggrieved employees receive damages
6 pursuant to §§248.5 in addition to reasonable attorneys' fees, and costs of suit
7 pursuant to Labor Code § 218.5 and CCP 1021.5;
- 8 R. That Defendant be ordered to pay restitution to Plaintiff, Class Members and
9 aggrieved employees for amounts acquired through Defendant's unlawful
10 activities pursuant to Business and Professions Code §§ 17200-05 and enjoined
11 to cease and desist from unlawful and unfair activities in violation of California
12 Business and Professions Code § 17200 et. seq.;
- 13 S. That Plaintiff, Class Members and aggrieved employees receive an award of
14 reasonable attorneys' fees and costs pursuant to Code of Civil Procedure
15 §1021.5, Labor Code §226, 218.5, and 1194 and/or applicable laws;
- 16 T. That the Court award penalties pursuant to Labor Code §2698 *et seq.*;
- 17 U. That the Court issue declaratory relief that Defendant's challenged policies are
18 unlawful; and
- 19 V. That the Court order further relief, in law and equity, as it deems appropriate
20 and just;
- 21

22 DATED: January 5, 2024

23 KOULLAW

24 

25 BY: Nazo Koulloukian, Esq.
26 Attorneys for Plaintiff MARIA
27 CARDENAS DE MONTES and putative
28 class members

EXHIBIT A



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 5, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th 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, 3rd 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

PROOF OF SERVICE
Case No. 23STCV24729
Montes v. Crown Poly, Inc.

I, IVETTE HERNANDEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On January 5, 2024, I served the foregoing document described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

 X **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

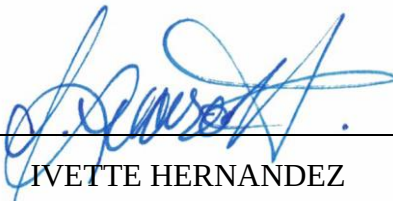
 BY E-MAIL: I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail ivette@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

GREGORY D. WOLFLICK,
ADAM N. BOUAYAD,
WOLFLICK, KHACHATURIAN & BOUAYAD, APC
130 North Brand Boulevard, Suite 410
Glendale, California 91203
Tel: (818) 243-8300
Email: greg@wolfsim.com; adam@wolfsim.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this January 5, 2024, in Los Angeles, California.



IVETTE HERNANDEZ