Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com

Attorneys for Plaintiff Melissa Pope

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County of San Diego
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Clerk of the Superior Court
By M. Ramirez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MELISSA POPE, on behalf of others similarly situated and the State of California under the Private Attorneys General Act,

Plaintiffs,

vs.

AGI POST, INC., CARGO FORCE, INC., and DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU005384C

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Plaintiff MELISSA POPE, on behalf of all others similarly situated and the State of California under the Private Attorneys General Act ("Plaintiff") brings this REPRESENTATIVE ACTION COMPLAINT against Defendants AGI POST, INC., CARGO FORCE, INC. and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. This is a representative action regarding Defendants' wage and hour violations.

2. This case is filed on behalf of the aggrieved employees.

3. Defendants underpaid wages by failing to include all forms of remuneration, including cash-in-lieu of benefits payments into the "regular rate of pay" calculation for their hourly overtime, sick, vacation, and premium wages, as applicable under state laws.

4. Defendants failed to maintain compliant meal and rest period practices, resulting in a failure to pay all wages and premiums owed to the aggrieved employees at the lawful rate.

5. Defendants failed to pay Plaintiff and the aggrieved employees for all hours worked due to unauthorized time editing.

6. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the aggrieved employees.

JURISDICTION & VENUE

7. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

8. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

9. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Melissa Pope

11. Plaintiff Pope is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2021 to February 2024. Plaintiff worked as a General Clerk 3.

12. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th _____ (Mar. 20, 2024, *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

13. Defendant AGI Post, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

14. Defendant Cargo Force, Inc. is a Delaware corporation that maintains operations and conducts business throughout the State of California, including in this county.

15. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

16. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised

control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

17. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

18. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

19. Plaintiff and the aggrieved employees worked for Defendants and were compensated on an hourly basis as nonexempt employees.

20. In addition to earning hourly compensation, Defendants paid Plaintiff and the aggrieved employees other forms of non-discretionary remuneration, including fringe benefit cash payments. These were not fringe benefits in the normal sense, but rather cash payments made to employees and paid out per hour worked on employee paychecks.

21. Some of these cash-in-lieu of benefits payments are designated as line items on wage statements for the aggrieved employees, including Plaintiff, with the label "FRINGE," an abbreviation for fringe benefits. Defendants paid these payments directly to Plaintiff and the aggrieved employees.

22. Rather than furnishing the fringe benefits to Plaintiff and the aggrieved employees, Defendants instead elected to furnish the cash equivalent. The cash payments were paid directly by Defendants and not by a third party or trustee and are not excluded from the "regular rate of pay" calculation under California law.

23. Defendants were required to include cash-in-lieu of benefits in the "regular rate of pay" for purposes of calculating and paying overtime to Plaintiff and the aggrieved employees. *See, e.g., Flores v. City of San Gabriel*, 824 F. 3d 890, 901 (9th Cir. 2016) (affirming "cash-in-lieu of benefits payments are not properly excluded" from the regular rate of pay).

24. Defendants failed to include the cash-in-lieu of benefits in the "regular rate of pay" for purposes of calculating and paying overtime wages to Plaintiff or the aggrieved employees during the Statutory Periods.

25. For example, in the pay period of December 11, 2023, to December 24, 2023, Plaintiff earned $363.20 as a cash payment in lieu of benefits and 4.06 hours of overtime. However, Plaintiff's overtime was paid at 1.5 times her base hourly rate. Defendants failed to factor in the cash-in-lieu of benefits payment in the overtime rate.

26. Plaintiff and the aggrieved employees routinely experienced missed, late, short, and interrupted meal periods to keep up with the demands of the job and due to understaffing issues. Nonetheless, Defendants had a policy and practice of altering employees' time records to remove meal period penalties. To the extent Defendants paid meal period premiums, Defendants improperly excluded all forms of additional remuneration, such as the cash benefits, from the calculation of the premium pay. Defendants were also required to include cash-in-lieu of benefits in the regular rate of compensation for purposes of calculating and paying meal and rest period premiums to Plaintiff and the aggrieved employees during the PAGA Period yet failed to do so. *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858, 862 (2021). As a result, Defendants failed to pay all owed meal period premiums.

27. For example, in the pay period from July 24, 2023 to August 8, 2023, Plaintiff earned $318.26 as a cash payment in lieu of benefits and was paid a meal period premium totaling $37.14. However, Plaintiff's meal period premium rate was paid at her base rate, instead of the "regular rate of pay" that should have included the cash-in-lieu of benefits payments.

28. Similarly, Defendants were required to pay rest period premiums at the regular rate of pay, inclusive of the fringe benefit payments. On information and belief, Plaintiff alleges the aggrieved employees were underpaid rest period premiums. To the extent any rest period premiums were paid, they were underpaid as a result of Defendants' policy and practice of not including all forms of remuneration in the calculation of the regular rate at which such rest period premiums must be paid.

29. On information and belief, Plaintiff alleges the aggrieved employees were underpaid sick leave. To the extent any sick leave was paid, those wages were underpaid as a result of

Defendants' policy and practice of not including all forms of remuneration in the calculation of the regular rate of compensation at which such sick leave must be paid.

30. Further, Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested time and wages. To the extent that Defendants paid vacation wages at termination, those wages were underpaid due to Defendants' failure to include fringe benefit payments into the final rate of pay.

31. On information and belief, Defendants' failure to pay vacation wages at the "regular rate of pay" was applied to the other aggrieved employees and is a matter of common payroll administration. Because of these violations, Defendants failed to provide accurate itemized wage statements to the aggrieved employees that included the accurate gross or net wages earned, as the employees earned regular, overtime, premiums, sick leave, and vacation pay which were not paid at the lawful rate.

32. Likewise, overtime, sick, vacation, and premium wages were paid at inaccurate hourly wage rates (*i.e.* the base rate or a multiple of the base rate for overtime instead of the regular rate) which violates the wage statement requirement to include the correct hourly rate in effect each pay period along with the correct number of hours. Therefore, Defendants have provided inaccurate and non-compliant wage statements to the aggrieved employees.

33. Furthermore, in each pay period in which Defendants paid cash-in-lieu of benefits, Defendants failed to state the hourly rate at which the cash-in-lieu of benefit payment earnings was paid and the corresponding number of hours at that rate.

34. These violations create derivative liability for failure to pay all wages owed each payday or upon separation of employment, as Defendants underpaid the overtime, sick, and premium pay on a regular payroll basis and upon separation of employment.

35. As a result of the foregoing violations, Defendants also failed to timely pay all wages as they were due to Plaintiff and the aggrieved employees while they were employed and also failed to timely pay all wages due to Plaintiff and the aggrieved employees at their separation of employment.

36. Moreover, Defendants failed to pay out all wages upon separation of employees to all the aggrieved employees, resulting in waiting time penalties. Plaintiff was terminated in March 2024, but Defendants did not pay her final wages until five days after her termination date. Plaintiff alleges this mismanagement of final paychecks was a manner of common policy and susceptible to common proof at trial.

<u>FIRST CAUSE OF ACTION</u>

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

37. All outside paragraphs of this Complaint are incorporated into this section.

38. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("<u>PAGA</u>"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

39. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

40. The State of California, via the Labor and Workforce Development Agency ("<u>LWDA</u>"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

41. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, 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. "

42. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: … (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.”

43. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

44. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

45. On or about **June 6, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

46. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor Code Violations” is attached hereto as <u>Exhibit 1</u> and incorporated by reference as though fully set forth herein (the “<u>PAGA notice</u>”).

47. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s written PAGA notice from the LWDA.

48. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

49. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

50. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

b. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.

c. ***Unpaid Vacation Wages.*** Violation of Labor Code § 227.3.

d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.

f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

i. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

51. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

a. For recovery of damages in amount according to proof;

b. For all recoverable pre- and post-judgment interest;

c. For this action to be maintained as a representative action under the PAGA;

d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

g. For such other relief the Court deems just and proper.

Dated: August 12, 2024

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Attorneys for Plaintiff Melissa Pope

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

June 6, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

AGI Post, Inc.
9130 S. Dadeland Blvd.
Miami, FL 33156

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and Workforce Development Agency

Cargo Force, Inc.
6705 Red Road, Suite 700
Coral Gables, FL 33143

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **MELISSA POPE** ("Plaintiff(s)") and all other "aggrieved employees" of the following "Defendant(s)":

AGI POST, INC.; CARGO FORCE, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act ("PAGA"). "PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of General Clerk III from about November 2021 to March 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The "aggrieved employees" include Plaintiff and the following individuals:

> All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the "aggrieved employees" and the "PAGA Period").

Plaintiff reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Overtime

Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

Defendants failed to pay overtime at the "regular rate of pay." Defendants paid Plaintiff and the aggrieved employees fringe benefits and other forms of additional remuneration which Defendants failed to include in the overtime rates in the pay periods when employees earned both. *See, e.g., Flores v. City of San Gabriel* (9th Cir. 2016) 824 F. 3d 890, 901 (affirming "cash-in-lieu of benefits payments are not properly excluded" from the regular rate of pay). Case law is clear that employers who pay cash in lieu of benefits must include such payments in the regular rate of pay. *Id.; see also Local 246 Util. Workers Union v. Southern California Edison Co*., (9th Cir. 1996) 83 F. 3d 292, 296 (holding cash payments made directly to employees were not excepted from the regular rate under the Health Insurance Exception because such payments were not made to a third party); *Bonner v. Metropolitan Security Services, Inc.* (W.D. Tex., Mar. 15, 2011) 2011 U.S. Dist. LEXIS 26251, Case No. SA-10-CV-937-XR (holding that cash health and welfare payments made directly by an employer to an employee under a contract governed by the Service Contract are not excludable from the "regular rate of pay").

Specifically, Plaintiff and the aggrieved employees earned fringe benefits and other remuneration that Defendant did not include when calculating the overtime rate. An illustrative example of this regular rate of pay violation as it pertains to overtime is shown below:

Cargo Force, Inc. 9130 South Dadeland Blvd Suite 1801 Miami, FL 33156 +1 305-740-3252
Melissa Pope

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Melissa Pope	Cargo Force, Inc.	107940	12/11/2023	12/24/2023	12/29/2023	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	74.00	2,072.13	0.00	254.79	37.66	1,779.68
YTD	2,145.45	55,194.22	0.00	6,365.16	720.08	48,133.98

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
CA Meal Penalty			0		204.27
Fringe	12/11/2023 - 12/24/2023	80	4.54	363.20	9,284.78
Happy Thanksgiving - Turkey Mc			0		25.00
Regular Hourly	12/11/2023 - 12/24/2023	69.95	18.57	1,298.98	34,915.87
OT	12/11/2023 - 12/24/2023	4.05	27.855	112.83	6,484.74
Sick Pay	12/11/2023 - 12/24/2023	8	18.57	148.56	2,525.52
Training			0		74.28
Un-Worked Holiday			0		1,027.36
Vacation	12/11/2023 - 12/24/2023	8	18.57	148.56	148.56
Holiday Worked DT			0		528.84
Earnings				2,072.13	55,219.22

Employee Taxes		
Description	Amount	YTD
OASDI	128.47	3,422.04
Medicare	30.05	800.32
Federal Withholding	22.42	516.52
State Tax - CA	55.20	1,129.53
CA SDI - CASDI	18.65	496.75
Employee Taxes	254.79	6,365.16

Extract from Plaintiff's Wage Statement with a Pay Date of 12/29/2023.

Here, Plaintiff earned a fringe benefit payment itemized as "Fringe" totaling $363.20 in the same period she worked overtime. However, Plaintiff's overtime was paid at a deficient rate because Defendants failed to properly factor the fringe benefit payment into the regular rate of pay. Upon information and belief, this company-wide policy and practice of not including fringe payments when calculating the regular rate of pay was applied to other aggrieved employees and is a matter of common payroll administration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 ($50/$100), 1199 / "Penalties" section of the IWC Wage Orders) ($50/$100), and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) "the same manner as the regular rate of pay for the workweek;" (2) "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;" or (3) "for exempt employee … in the same manner as the employer calculates wages for other forms of paid leave time." Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees "with written notice of the amount of paid sick leave available … for use on either the employee's itemized wage statement … or in a separate writing provided on the designated pay date with the employee's payment of wages."

Defendants failed to comply with California's paid sick leave laws with respect to the aggrieved employees. To the extent the aggrieved employees earned sick pay in the same pay period they earned other non-excludable remuneration, Defendants underpaid those wages due to the regular rate violations addressed above. Specifically, Defendants did not pay the aggrieved employees sick leave "in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick leave, whether or not the employee actually worked overtime in that workweek," as the regular rate should have included fringe benefits and all other forms of additional non-excludable remuneration.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Vacation Wages
Violation of Labor Code § 227.3

Defendants violated Labor Code section 227.3 with respect to the aggrieved employees.

Labor Code section 227.3 requires "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 accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination."

Defendants maintained an unlawful policy and practice of failing to pay all accrued and unused vacation wages upon separation of employment at the lawful rate of pay, resulting in forfeiture of vested vacation time and wages.

To the extent that Defendants paid vacation wages at termination, those wages were underpaid due to Defendant's failure to include fringe benefits into the regular rate of pay. On information and belief, Defendants' failure to pay vacation wages at the regular rate of pay was applied as a matter of policy and practice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and the aggrieved employees often experienced missed, late, short, and interrupted meal periods in order to keep up with the high demands of the job. Plaintiff would regularly take her lunch past the fifth hour of work to ensure that she met her work responsibilities.

Moreover, upon information and belief, Defendant had a policy and practice of altering employees' time records to remove meal period penalties. As a result, Plaintiff and the aggrieved employees did not receive meal period premiums each time they experienced a non-compliant meal period and were due a meal period premium.

However, to the extent Defendants paid meal period premiums, Defendant did not pay those premiums at the regular rate of pay. As explained in the "Unpaid Overtime" section above, Defendant did not include all renumeration when calculating the regular rate of pay at which meal premiums must be paid. Specifically, Defendants failed to include fringe benefit payments in the regular rate of pay for purposes of meal period premiums. Instead, Defendant paid meal premiums to Plaintiff and aggrieved employees at their base hourly rate.

An illustrative example of Defendants' regular rate of pay violation as it pertains to meal period premiums wages is shown below:

Cargo Force, Inc. 9130 South Dadeland Blvd Suite 1801 Miami, FL 33156 +1 305-740-3252
Melissa Pope

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Melissa Pope	Cargo Force, Inc.	107940	07/24/2023	08/06/2023	08/11/2023	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	60.10	1,620.02	0.00	164.61	37.66	1,417.75
YTD	1,449.40	35,961.69	0.00	4,183.74	343.48	31,434.47

Earnings					
Description	Dates	Hours	Rate	Amount	YTD
CA Meal Penalty	07/31/2023 - 08/06/2023	2	18.57	37.14	55.71
Fringe	07/24/2023 - 08/06/2023	70.1	4.54	318.26	5,729.72
Regular Hourly	07/24/2023 - 08/06/2023	60.1	18.57	1,116.06	22,479.43
OT			0		5,917.79
Sick Pay	07/24/2023 - 08/06/2023	8	18.57	148.56	891.36
Un-Worked Holiday			0		581.68
Holiday Worked DT			0		306.00
Earnings				1,620.02	35,961.69

Employee Taxes		
Description	Amount	YTD
OASDI	100.44	2,229.62
Medicare	23.49	521.44
Federal Withholding	0.00	433.58
State Tax - CA	26.10	675.44
CA SDI - CASDI	14.58	323.66
Employee Taxes	164.61	4,183.74

Extract from Plaintiff's Wage Statement with a Pay Date of 08/11/2023.

Here, Defendant paid Plaintiff a meal period premium totaling $37.14 in the same pay period she earned a fringe benefit. However, Plaintiff's meal period premium rate was paid at her base rate, instead of the regular rate of pay that should have included the fringe benefit into the premium rate.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Unpaid Rest Period Premium Wages</u>
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

<u>Labor Code sections 226.7</u> and <u>516</u> and the <u>IWC Wage Orders</u> require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. <u>Labor Code section 226.7</u> requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). <u>Labor Code section 1198</u> renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The <u>IWC Wage Orders</u>, including <u>Section 12</u> (<u>Rest Periods</u>), further require one uninterrupted 10-minute rest period for each four-hour period (or major faction thereof) worked and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

For the same reasons set forth above in the "Unpaid Meal Period Premiums" section, Plaintiff and aggrieved employees often suffered short, late, missed, and/or interrupted rest periods. Defendants did not pay Plaintiff or aggrieved employees rest period premiums to compensate for those deficient rest periods. However, to the extent that Defendants ever paid rest period premiums to Plaintiff or the aggrieved employees, Plaintiff believes and alleges those premiums were underpaid due to the same regular rate calculation issues stated above.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Untimely Payment of Wages During Employment</u>
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

<u>Labor Code section 204(a)</u> requires payment of "all wages" for non-exempt employees at least twice each calendar month. <u>Labor Code section 204(d)</u> states all wages due must be paid "not more than seven calendar days following the close of the payroll period." <u>Labor Code section 204b</u> applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. <u>Labor Code section 210</u> provides "every person who fails to

pay the wages of an employee as provided in Section … 204 … shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all regular, overtime, premiums, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, and Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

Specifically, Defendant did not pay Plaintiff her final wages in a timely manner upon her termination. Plaintiff was officially terminated on March 15, 2024. However, as shown below, she did not receive her final paycheck March 20, 2024, five days after her termination.

> AGI POST
>
> March 15, 2024
>
> Dear Melissa Pope,
>
> This letter confirms that your employment with AGI POST has been terminated effective immediately, as part of a reduction in our workforce staff.
>
> Your final paycheck will be provided to you on March 20,2024

Defendant terminated Plaintiff on March 15, 2024, but did not pay her final wages until five days after her termination.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct "gross wages earned" or "net wages earned," as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of "gross wages earned" on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 ($250/$1,000) and 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 ($500) and 2699 ($100/$200), along with all other civil penalties permitted by law.

<u>Attorneys' Fees and Costs</u>
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE –

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold <u>must be suspended immediately</u>.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

Mariela R. Romo

Cc Plaintiff Melissa Pope

Counsel for Defendants
Marissa Alguire – marissa.alguire@akerman.com
Mojan Anari - mojan.anari@akerman.com