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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TIFFANY MCCREIGHT, individuals, on
behalf of herself, all aggrieved employees, and
the State of California as a Private Attorneys
General,

Plaintiff,

vs.

D'VEAL CORPORATION, a California non-
profit corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: **24STCV20543**

REPRESENTATIVE ACTION

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

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

4 NATURE OF THE ACTION

5 1. Plaintiff TIFFANY MCCREIGHT worked as an employee for Defendant D'VEAL
6 CORPORATION and Does 1-50 (collectively "Defendant"). Defendant provides behavioral
7 healthcare services. Plaintiff TIFFANY MCCREIGHT worked for Defendant as a Behavioral
8 Specialist, and subsequently a Child Family Specialist in Pasadena, CA, from December 2022 until
9 May 2024. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
10 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
11 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
12 are aggrieved employees.

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

22 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) failing to pay wages owed twice per month; (3)
24 failing to pay minimum wage; (4) failing to provide rest breaks; (5) failing to provide uninterrupted
25 meal breaks; (6) failing to reimburse for required business expenses; (7) failing to pay wages due
26 upon termination; (8) failing to provide accurate itemized wage statements. Defendant is therefore
27 liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
28 ("PAGA"), Labor Code §2698 *et seq.*, as described more fully herein.

1 **THE PARTIES**

2 4. Plaintiff TIFFANY MCCREIGHT is a resident of the State of California and worked as
3 an employee for Defendant as a Behavioral Specialist, and subsequently a Child Family Specialist
4 in Pasadena, CA, from December 2022 until May 2024.

5 5. Defendant D'VEAL CORPORATION, is a California non-profit corporation authorized
6 to do business and doing business in California with the capacity to sue and to be sued, and doing
7 business, in the county of Sacramento, State of California.

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

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

20 **JURISDICTION AND VENUE**

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

24 9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
25 the Superior Court and will be established according to proof at trial. Based on information,
26 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
27 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
28 (\$25,000).

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

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

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

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

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

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

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

20 (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,
21 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4/5)

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

24 17. The Wage Orders define “hours worked” as “the time during which an employee is
25 subject to the control of an including all the time the employee is suffered or permitted to work,
26 whether or not required to do so.” Defendant has been engaged in many unlawful employment
27 practices which resulted in underpayment for hours worked each pay period.
28

1 18. Off the Clock Work – On-Call Hours. Plaintiff and other aggrieved employees were
2 required to perform extensive work while off the clock. For example, although Plaintiff's official
3 schedule was Monday-Friday from 9-5, Plaintiff was required to be available at all times to respond
4 to calls from clients, including nights and weekends. Because the clients Defendant served were
5 often at-risk, calls to Plaintiff were often an emergency and Plaintiff was required to answer even
6 if she was off the clock but was discouraged and intimidated from recording the time actually spent
7 working with clients, or her time spent on-call time during hours outside her regular schedule.
8 Other aggrieved employees were also required to spent time on call but were not paid for this time.

9 19. Work Performed During Unpaid Meal Periods. Plaintiff and other aggrieved employees
10 were sometimes required to clock out for lunch but to continue working. Often she was scheduled
11 to meet with clients during what would otherwise be her meal period and she was required to
12 prioritize the client meeting. Plaintiff and aggrieved employees were also required to keep their
13 phone on and remain on call for clients during meal periods.

14 20. When Defendant paid overtime, sick pay, and vacation wages on termination,
15 Defendant failed to calculate overtime at the correct regular rate of pay, resulting in underpaid
16 overtime, sick pay, and vacation wages for Plaintiff and aggrieved employees. Defendant also
17 unlawfully rounded timecard entries resulting in time and hours shaved from timecards.

18 21. Defendant's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197
19 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,
20 226, 558, 1194 and 1194.2, Plaintiff and other Aggrieved Employees are entitled to recover
21 damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys'
22 fees, expenses, and costs of suit. As a result of these ongoing violations, Defendant is liable for,
23 among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq.

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

33. Plaintiff and aggrieved employees often experienced late, short, and/or interrupted meal periods, or their meal periods were missed altogether. Plaintiff and aggrieved employees were also sometimes instructed to clock out for lunch but to keep working, or were required to do this due to the press of work. Plaintiff and aggrieved employees were also required to keep their phones on and remain on call during their unpaid meal periods, so they were never duty-free.

COMPLAINT
- 8 -

1 meal periods were not given to them in compliance with California law. Accordingly, Defendant
2 is liable to Plaintiff and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698
3 *et. seq.*

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

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

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

8 36. Labor Code §2802 requires employers to indemnify employees for necessary
9 expenditures or losses incurred by employees in direct consequence of discharge of duties.

10 37. Plaintiff and aggrieved employees were required to use their personal phones for work
11 purposes. Plaintiff and aggrieved employees clocked in and out on their phones using an App
12 called Paycom. Plaintiff and aggrieved employees were also required to use their phones to answer
13 client calls. For example, when Plaintiff was undergoing training, she was instructed to establish
14 a google number on her phone so that she could communicate with clients. Her requests for a
15 company phone and/or stipend were unaddressed. Defendant failed to sufficiently reimburse
16 employees for these necessary business expenses and is therefore liable to Plaintiff and aggrieved
17 employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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

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

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

22 39. An employee who is discharged must be paid all of his or her wages, including accrued
23 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
24 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
25 Plaintiff at the time employment terminated.

26 40. Defendant willfully failed to pay employees who are no longer employed by it all
27 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
28 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as

1 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
2 Cal. Lab. Code § 2698 *et. Seq.*

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

4 **Requirements**

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

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

8 42. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
9 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
10 and keep accurate records as required by §1174(d).

11 43. The statements provided to Plaintiff and aggrieved employees, and the records
12 maintained by Defendant, have not accurately reflected actual gross wages earned, including pay
13 for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay,
14 vacation wages, and pay for meal and rest period premium wages.

15 44. §226 (a) requires:

16 A. An employer, semimonthly or at the time of each payment of wages,
17 shall furnish to his or her employee, either as a detachable part of the check,
18 draft, or voucher paying the employee's wages, or separately if wages are paid
19 by personal check or cash, an accurate itemized statement in writing showing
20 (1) gross wages earned, (2) total hours worked by the employee, except as
21 provided in subdivision (j), (3) the number of piece-rate units earned and any
22 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
23 deductions, provided that all deductions made on written orders of the employee
24 may be aggregated and shown as one item, (5) net wages earned, (6) the
25 inclusive dates of the period for which the employee is paid, (7) the name of the
26 employee and only the last four digits of his or her social security number or an
27 employee identification number other than a social security number, (8) the
28 name and address of the legal entity that is the employer and, if the employer is

1 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
2 and address of the legal entity that secured the services of the employer, and (9)
3 all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate by the employee...

5 45. Such failures called injury to Plaintiff and others, by, among other things, impeding
6 them from knowing the amount of wages to which they are and were entitled. Defendant
7 knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned,
8 and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et*
9 *seq.*

10 46. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
11 employees to sign employment-related contracts and documents that contained unlawful terms of
12 employment

13 **FIRST CAUSE OF ACTION**

14 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**
15 **(California Labor Code §2698 *et seq.*)**

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

18 48. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by
19 Defendant during the applicable statutory period and suffered one or more of the Labor Code
20 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other
21 current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus
22 reasonable attorneys’ fees and costs.

23 49. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
25 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

26 50. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
27 Code provisions:
28

- a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4/5);
- b. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and 2698 *et seq.*);
- c. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- d. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- e. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*);
- f. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §1198, 2802, 2699 *et seq.*);
- g. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*);
- h. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

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

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

53. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
2 a civil penalty is not specifically provided.

3 54. Plaintiff and the other current and former employees of Defendant is aggrieved
4 employees. They were or are employed by Defendant, and each of them, and the violations alleged
5 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
6 current and former aggrieved employees.

7 55. At the time of each violation, Defendant employed one or more employees.

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

11 57. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
12 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
13 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
14 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
15 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
16 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
17 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
18 employees and the State of California.

19 **PRAYER FOR RELIEF**

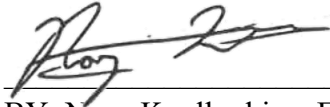
20 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
21 judgement against Defendant as follows:

- 22 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
23 determined at trial, but at least the jurisdictional amount of this Court;
- 24 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
25 and/or other applicable law;
- 26 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
27 law;
- 28 4. Pre-judgement and post-judgement interest as provided by law; and

1 5. Such other and further relief that the Court may deem just and proper.
2

3 DATED: August 13, 2024

4 **KOUL LAW FIRM, APC**

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7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff TIFFANY MCCREIGHT,
9 and all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 3, 2024

Via E-filing:

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

Via Certified U.S. Mail:

D’Veal Corporation
2750 E. Washington Blvd., Suite 230
Pasadena, CA 91107

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Tiffany McCreight
Employer: D’Veal Corporation

Dear Sir or Madam:

Claimant and aggrieved employee Tiffany McCreight has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent her, and all other aggrieved employees in California, for wage and hour claims against her employer, D’Veal Corporation (hereafter referred to as “Employer”). Employer hired, assigned, and paid Claimant to work as Behavioral Specialist, and subsequently a Child Family Specialist in Pasadena, CA, from December 2022 until May 2024.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under 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 Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by Claimant, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Claimants need not have actually suffered all of the Labor Code violations that they alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those Claimant may not have personally suffered.

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

Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 4/5

The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Off the Clock Work – On-Call Hours

Claimant and other aggrieved employees were required to perform extensive work while off the clock. For example, although Claimant's official schedule was Monday-Friday from 9-5, Claimant was required to be available at all times to respond to calls from clients, including nights and weekends. Because the clients Employer served were often at-risk, calls to Claimant were often an emergency and Claimant was required to answer even if she was off the clock but was discouraged and intimidated from recording the time actually spent working with clients, or her time spent on-call time during hours outside her regular schedule. Other aggrieved employees were also required to spent time on call but were not paid for this time.

Work Performed During Unpaid Meal Periods

Claimant and other aggrieved employees were sometimes required to clock out for lunch but to continue working. Often she was scheduled to meet with clients during what would otherwise be her meal period and she was required to prioritize the client meeting. Employees were also required to keep their phone on and remain on call for clients during meal periods.

When Employer paid overtime, sick pay, and vacation wages on termination, Employer failed to calculate overtime at the correct regular rate of pay, resulting in underpaid overtime, sick pay, and vacation wages for Claimant and aggrieved employees. Employer also unlawfully rounded timecard entries resulting in time and hours shaved from timecards.

Employer's conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees, expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 *et seq.*

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, aggrieved employees were underpaid for hours worked, including overtime, PTO, vacation, sick pay, and meal and rest premium wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

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

Pursuant to Labor Code §§ 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 Wage Orders. Pursuant to the Applicable Wage Orders "hours worked" include "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

During the applicable recovery period, Claimant and aggrieved employees were suffered, permitted, and required to perform work by Employer for which they received no pay. The aforementioned acts by Employer were undertaken with the intention of depriving aggrieved employees of their earned wages. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 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 rarely receiving rest breaks due to the press of work. When Claimant and aggrieved employees did

receive breaks, they were often late, short, and interrupted. Further, employees were required to keep their phones on them and remain on call, so rest breaks were never duty-free.

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 timely 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 the Wage Orders. When breaks were missed Employer failed to pay the 1-hour premium pay at the employee’s *regular rate of pay*, as required. Because Employer violated the Wage Order, Employer is liable to Claimant and aggrieved employees under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

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

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take a timely 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 often experienced late, short, and/or interrupted meal periods, or their meal periods were missed altogether. Claimant and aggrieved employees were also sometimes instructed to clock out for lunch but to keep working, or were required to do this due to the press of work. Employees were also required to keep their phones on and remain on call during their unpaid meal periods, so they were never duty-free.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid at their regular rate of pay when meal periods were not given to them in compliance with California law. Accordingly, Employer is liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Reimburse For Required Business Expenses

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

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties.

Claimant and aggrieved employees were required to use their personal phones for work purposes. Employees clocked in and out on their phones using an App called Paycom. Claimant and aggrieved employees were also required to use their phones to answer client calls. For example, when Claimant was undergoing training, she was instructed to establish a google number on her phone so that she could communicate with clients. Her requests for a company phone and/or stipend were unaddressed. Employer failed to sufficiently reimburse employees for these necessary business expenses and is therefore liable to Claimant and aggrieved employees for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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, including accrued vacation, 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 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. Claimants 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 Accurate Itemized Wage Statements & Violation of Record-Keeping Requirements

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay, vacation wages, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. 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 claims as a representative action in civil court.

Respectfully submitted,



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