


<b>LABOR COMMISSIONER, STATE OF CALIFORNIA</b> Department of Industrial Relations Division of Labor Standards Enforcement 7575 Metropolitan Dr., Ste. 210 San Diego CA 92108 Tel: (619) 220-5451 Fax: (619) 767-2020		
Plaintiff: Carolyn Matteo		
Defendant: Brian Takita, an individual		
State Case Number <b>10 - 79632 MM</b>	<b>NOTICE OF PAYMENT DUE</b>	

You have been served a copy of the Labor Commissioner's Order, Decision or Award.

If the full amount of the sums set forth in the Order, Decision or Award is received by this office within ten (10 ) days of the date the Order, Decision or Award was served upon you, no judgment will be entered in this matter.

Payment must be made by certified check, cashier's check or money order (no other tender will be accepted) made payable to the Plaintiff named in the Order, Decision or Award, and addressed to the Office of the Labor Commissioner at the address shown above.

DATED: February 13, 2013

*Mark Meeker*

Mark Meeker  
619-767-2009

Deputy Labor Commissioner



DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

In the Matter of	)	State Case Number
	)	
CAROLYN MATTEO	)	<b>10-79632 MM</b>
	)	ORDER, DECISION OR AWARD
Plaintiff	)	OF THE LABORCOMMISSIONER
	)	
v.	)	
	)	
BRIAN TAKITA, AN INDIVIDUAL	)	
	)	
	)	
	)	
Defendant	)	
_____	)	

**APPEARANCES FOR PLAINTIFF:**

Carolyn Matteo (Plaintiff)

**APPEARANCES FOR DEFENDANT:**

No Appearances

**BACKGROUND**

The Plaintiff filed an initial report or claim with the Labor Commissioner's office on September 14, 2012. The complaint raises the following allegations:

1. That the Plaintiff is entitled to recover from the Defendant \$256.00 for regular wages earned in the period July 12, 2012 through July 15, 2012, being thirty-two (32) regular hours at \$8.00 per hour.
2. That the Plaintiff is entitled to recover from the Defendant \$170.00 for expenses incurred in the discharge of her duties during the period July 12, 2012 through July 15, 2012.
3. That the Plaintiff is entitled to recover from the Defendant \$256.00 in liquidated damages pursuant to the provisions of Labor Code Section 1194.2.



1 4. That the Plaintiff is entitled to recover from the Defendant penalties pursuant to the  
2 provisions of Labor Code Section 203 at the rate of \$64.00 per day for an indeterminate number  
3 of days not to exceed thirty (30) days.

4 5. That the Plaintiff is entitled to recover from the Defendant interest pursuant to the  
5 provisions of Labor Code Sections 98.1, 1194.2 and 2802.

6 A hearing was conducted at the Labor Commissioner's office in San Diego, California on  
7 February 11, 2012, before the undersigned hearing officer designated by the Labor  
8 Commissioner to hear this matter.

9 The Plaintiff appeared pro persona.

10 The Defendant failed to appear at the hearing and did not file an answer to the complaint.

11 Due consideration having been given to the testimony, documentary evidence, and arguments  
12 presented, the Labor Commissioner hereby adopts the following Order, Decision or Award.

13 **FINDINGS OF FACT**

14 The Plaintiff testified that she worked for the Defendant from July 12, 2012 through July 15,  
15 2012 as a personal assistant to Nadeea Valianova. The Plaintiff testified that the agreed rate of  
16 pay was \$250.00 for four (4) days of work. The Plaintiff testified that she was asked to work a  
17 fifth (5<sup>th</sup>) day but she declined as the agreement was only for four (4) days.

18 The Plaintiff testified that she typically worked eight (8) hours per day.

19 The Plaintiff testified that she requested payment from Nadeea Valianova . The Plaintiff  
20 testified that Nadeea Valianova referred her to the Defendant and informed her that he would  
21 take care of it.

22 The Plaintiff testified she emailed and phoned requesting her wages multiple times. The  
23 Plaintiff testified that the Defendant refused to pay her and informed her that she could take him  
24 to court.

25 The Plaintiff entered into evidence an email dated July 18, 2012 (Plaintiff's Exhibit #1). The  
26 email is from the Plaintiff to the Defendant as well as "missheartheranne@gmail.com" and  
27 management@nadeea.com. The email states, in pertinent part, "I worked 4 days, at least 40  
hours for a grand total of \$250.00." The email states, in pertinent part, "Additionally, I paid, out

1 of my own pocket for some of Nadeeas purchases, (none of which have been reimburse to date)  
2 I used my own vehicle (your ad falsely stated that Nadeea would have a car for me to use but  
3 she didn't), I used my own camera and edited, per your clients' request, on my own time-photos  
4 she demanded I take. (I have text messages to prove this) I emailed many batches of edited  
5 photos to your client at <mailto:management@nadeea.com>".

6 The Plaintiff entered into evidence a Location Management page from Yahoo showing the  
7 Defendant's address (Plaintiff's Exhibit #2).

8 The Plaintiff is claiming \$170.00 for expenses.

### 9 10 LEGAL ANALYSIS

11 The wages, hours and working conditions of the Defendant's employees are regulated by the  
12 provisions of the California Labor Code and the Orders of the Industrial Welfare Commission.

13 In these administrative hearings, the Plaintiff has the initial burden of proof.<sup>1</sup>

14 "Burden of proof" is defined in California Evidence Code Section 115 as follows: "Burden of  
15 proof" means the obligation of a party to establish by evidence a requisite degree of belief  
16 concerning a fact in the mind of the trier of fact or the court. In these administrative hearings the  
17 trier of fact is the Hearing Officer.

18 California Evidence Code Section 115 also provides "Except as otherwise provided by law, the  
19 burden of proof requires proof by a preponderance of the evidence."

20 "Evidence" is defined in California Evidence Code Section 140 as follows: "Evidence" means  
21 testimony, writings, material objects, or other things presented to the senses that are offered to  
22 prove the existence or nonexistence of a fact.

23 "Preponderance of the evidence" means that evidence that, when weighed with that opposed  
24 to it, has more convincing force and the greater probability of truth.<sup>2</sup>

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<sup>1</sup> California Evidence Code Section 500 et seq.

<sup>2</sup> California Labor Code Section 3202.5

1 In that the Defendant failed to appear at the hearing and did not file an answer to the  
2 complaint, there is nothing before the Hearing Officer to deny or mitigate the Plaintiff's  
3 complaint.

4 That being said, Labor Code Section 98(f) provides, in part, "If the defendant fails to appear or  
5 answer within the time allowed under this chapter, no default shall be taken against him or her,  
6 but the Labor Commissioner shall hear the evidence offered and shall issue an order, decision,  
7 or award in accordance with the evidence."

8 The Plaintiff's complaint alleges, in part, that the Plaintiff is entitled to recover from the  
9 Defendant \$256.00 for regular wages earned in the period July 12, 2012 through July 15, 2012,  
10 being thirty-two (32) regular hours at \$8.00 per hour.

11 Labor Code Section 200 defines wages as "...all amounts for labor performed by employees of  
12 every description, whether the amount is fixed or ascertained by the standard of time, task,  
13 piece, commission basis, or other method of calculation."

14 Based on the Plaintiff's testimony she is entitled to the wages being sought.

15 Concerning this portion of the Plaintiff's complaint, the evidence supports a finding that the  
16 Plaintiff has met the burden of proof as required by law.

17 Therefore, the Plaintiff is entitled to recover from the Defendant \$256.00 in regular wages,  
18 being thirty-two (32) hours at \$8.00 per hour.

19 The Plaintiff's complaint alleges, in part, that the Plaintiff is entitled to recover from the  
20 Defendant \$170.00 in expenses.

21 Labor Code Section 2802 provides, "(a) An employer shall indemnify his or her employee for  
22 all necessary expenditures or losses incurred by the employee in direct consequence of the  
23 discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
24 though unlawful, unless the employee, at the time of obeying the directions, believed them to be  
25 unlawful. (b) All awards made by a court or by the Division of Labor Standards Enforcement for  
26 reimbursement of necessary expenditures under this section shall carry interest at the same rate  
27 as judgments in civil actions. Interest shall accrue from the date on which the employee  
incurred the necessary expenditure or loss. (c) For purposes of this section, the term "necessary



1 expenditures or losses" shall include all reasonable costs, including, but not limited to, attorney's  
2 fees incurred by the employee enforcing the rights granted by this section."

3 The courts have noted that the "cases under this statute are few".<sup>3</sup> In Grissom v. Vons  
4 Companies, Inc. (1991) 1 Cal.App.4<sup>th</sup> 52, the court stated "If that expenditure is necessarily in  
5 direct consequence of the discharge of the employee's duties, then the employer must  
6 'indemnify' the employee".

7 Based on Exhibit #1, the Plaintiff is entitled to the expenses being claimed.

8 The evidence supports a finding that the expenses incurred by the Plaintiff and for which the  
9 Plaintiff now seeks reimbursement were expenditures incurred "necessarily in direct  
10 consequence" of discharging her duties.

11 Concerning this portion of the Plaintiff's complaint, the evidence supports a finding that the  
12 Plaintiff has met the burden of proof as required by law.

13 Therefore, the Plaintiff is entitled to recover from the Defendant \$170.00 in expenses.

14 The Plaintiff's complaint alleges, in part, that the Plaintiff is entitled to recover from the  
15 Defendant liquidated damages pursuant to the provisions of Labor Code Sections 98 and 1194.2.

16 Labor Code Section 98 provides in relevant part, "(a) The Labor Commissioner is authorized to  
17 investigate employee complaints. The Labor Commissioner may provide for a hearing in any  
18 action to recover wages, penalties, and other demands for compensation, including liquidated  
19 damages if the complaint alleges payment of a wage less than the minimum wage fixed by an  
20 order of the Industrial Welfare Commission or by statute, properly before the division or the  
21 Labor Commissioner, including orders of the Industrial Welfare Commission, and shall  
22 determine all matters arising under his or her jurisdiction."

23 Labor Code Section 1194.2 provides, in relevant part, "(a) In any action under Section 98,  
24 1193.6, or 1194 to recover wages because of the payment of a wage less than the minimum wage  
25 fixed by an order of the commission or by statute, an employee shall be entitled to recover  
26 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.  
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<sup>3</sup> *Machinists Automotive Trades Dist. Lodge v. Utility Trailers Sales Co.* (1983) 141 Cal.App.3d 80, 87

1 Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages  
2 for failure to pay overtime compensation.”

3 The Plaintiff was not paid minimum wage as required by the Labor Code and Industrial  
4 Welfare Commission Orders. The Plaintiff is entitled to liquidated damages.

5 Concerning this portion of the Plaintiff’s complaint, the evidence supports a finding that the  
6 Plaintiff has met the burden of proof as required by law.

7 Therefore, the Plaintiff is entitled to recover from the Defendant \$256.00 in liquidated  
8 damages, being thirty-two (32) hours at \$8.00 per hour.

9 The Plaintiff’s complaint alleges, in part, that the Plaintiff is entitled to recover from the  
10 Defendant penalties pursuant to the provisions of Labor Code Section 203 at the rate of \$64.00  
11 per day for an indeterminate number of days not to exceed thirty (30) days.

12 California Labor Code Section 203 provides, in relevant part, “If an employer willfully fails to  
13 pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any  
14 wages of an employee who is discharged or who quits, the wages of the employee shall continue  
15 as a penalty from the due date thereof at the same rate until paid or until an action therefor is  
16 commenced; but the wages shall not continue for more than 30 days. An employee who secretes  
17 or absents himself or herself to avoid payment to him or her, or who refuses to receive the  
18 payment when fully tendered to him or her, including any penalty then accrued under this  
19 section, is not entitled to any benefit under this section for the time during which he or she so  
20 avoids payment.”

21 California Labor Code Section 201 provides, in relevant part, “(a) If an employer discharges an  
22 employee, the wages earned and unpaid at the time of discharge are due and payable  
23 immediately.”

24 Labor Code Section 208 provides, “Every employee who is discharged shall be paid at the  
25 place of discharge, and every employee who quits shall be paid at the office or agency of the  
26 employer in the county where the employee has been performing labor. All payments shall be  
27 made in the manner provided by law.”



1 The evidence supports a finding that the Plaintiff was discharged and that her final wages  
2 were not paid immediately as required by Labor Code Section 201.

3 In addressing the purpose, the intent and the finding of fault for a willful failure to pay as  
4 provided for in Labor Code Section 203, the courts have held, "... to be at fault within the  
5 meaning of the statute, the employer's refusal to pay need not be based on a deliberate evil  
6 purpose to defraud workmen of wages which the employer knows to be due."<sup>4</sup>

7 Concerning this portion of the Plaintiff's complaint, the evidence supports a finding that the  
8 Plaintiff has met the burden of proof as required by law.

9 Therefore, the Plaintiff is entitled to recover from the Defendant \$1,920.00 for penalties  
10 pursuant to the provisions of Labor Code Section 203, being \$64.00 per day for thirty (30) days.

11 The Plaintiff's complaint alleges, in part, that the Plaintiff is entitled to recover from the  
12 Defendant interest pursuant to the provisions of Labor Code Sections 98.1, 1194.2 and or 2802.

13 Labor Code Section 98.1(c) provides, "All awards granted pursuant to a hearing under this  
14 chapter shall accrue interest on all due and unpaid wages at the same rate as prescribed by  
15 subdivision (b) of Section 3289 of the Civil Code. The interest shall accrue until the wages are  
16 paid from the date that the wages were due and payable as provided in Part 1 (commencing  
17 with Section 200) of Division 2."

18 Labor Code Section 1194.2 provides, in relevant part, "(a) In any action under Section 98,  
19 1193.6, or 1194 to recover wages because of the payment of a wage less than the minimum wage  
20 fixed by an order of the commission or by statute, an employee shall be entitled to recover  
21 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.  
22 Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages  
23 for failure to pay overtime compensation."

24 California Labor Code Section 2802(b) provides, "All awards made by a court or by the  
25 Division of Labor Standards Enforcement for reimbursement of necessary expenditures under  
26 this section shall carry interest at the same rate as judgments in civil actions."  
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<sup>4</sup> *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1

1 In that a portion of the Plaintiff's award is for due and unpaid wages, liquidated damages and  
2 for expenses incurred in the discharge of her duties, the Plaintiff is entitled to interest on the  
3 award.

4  
5 **CONCLUSION**

6  
7 For all of the reasons set forth above, it is hereby ordered that the Plaintiff is entitled to recover  
8 from the Defendant a total of \$2,641.79 calculated as follows:

- 9 1. \$256.00 for wages (with lawful deductions)  
10 2. \$256.00 for liquidated damages pursuant to Labor Code Section 1194.2  
11 3. \$170.00 for reimbursable business expenses  
12 4. \$39.79 for interest pursuant to the provisions of Labor Code Sections 98.1(c), 1194.2  
13 and 2802 (b)  
14 5. \$1,920.00 for additional wages accrued pursuant to Labor Code Section 203 as a  
15 penalty and that same shall not be subject to payroll or other deductions

16  
17 Dated: February 13, 2013

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19 Dan Minchey  
20 Hearing Officer