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===== Start of Answer 1 (2001 words) =====

LAW OFFICES OF JEFFREY SU
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INTEROFFICE MEMORANDUM

TO: Jeff Su
FROM: Applicant
DATE: July 28, 2016
RE: Wong v. Pavlik Foods, Inc.

You have asked me to draft a memorandum address the legal issues pertaining to the filing of a class action against Pavlik Foods, Inc. with Mr. Wong as a class representative. First, Wong will not be able to meet the requirements for a class representative under the UCL because of a lack of commonality between the aggrieved employees. Second, Wong will be able to bring a PAGA Suit. THird, there are preqs that must be met.

Certification of a class of current and former employees for recovery of back wages under the UCL

The Unfair Competition Law (UCL) is a law which prevents and addresses any "unlawful, unfair or fraudulent business act or practice." (UCL section 17200). Under section 17203, the law authorizes class actions. The claimant may bring, "representative claims or relief on behalf of others *only* if the claimant meets the standing requirements of section 17204 and complies with Section 382 of the Code of Procedure.

The standing requirements of section 17204 provide that a claimant must have, "suffered injury in fact and has lost money or property as a result of the unfair competition." Here, Wong has suffered an injury in fact because he was fired from his job because of unfair business practices. Furthermore, his employer allegedly underpaid him for both overtime and lunch breaks. The transcript of the interview with Wong from July 25, 2016 states that Wong "worked straight through" his lunch period and his employer would always deduct the hour of work from his check because Wong was supposed to take a lunch break. Furthermore, Wong disclosed that he often worked overtime and only took one day off a week and was not compensated correctly for it. Thus, Wong has standing under section 17204 to bring the claim against Pavlik because he suffered an injury in fact and economic loss.

In addition to having to meet the standing requirement set forth in the UCL, the representative must meet the requirements of Section 382 of the Columbia Code of Procedure. Class actions are authorized under Section 382 of the Columbia Code of Procedure. Section 382 states, "When the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." *Excerpts from the columbia business code*. The Columbia Supreme Court has interpreted Section 382 in the same way as Rule 23 of the Federal Rules of Civil Procedure. (*Cambell v. Omnibus Industries, Inc.*). FRCP 23 provides the following basic essential for maintenance of class actions:

- 1) Numerosity: The class is so numerous that joinder of all members is impracticable;
- 2) Commonality: There are questions of law or fact common to the class;
- 3) Typicality: The claims or defenses of the representative parties are typical of the claims or defense of the class; and
- 4) Adequacy of Representation: The representative parties will fairly and adequately protect the interests of the class.

Thus, Wong must meet the above requirements in order to bring a class action suit against his former employer.

The Superior Court in and for the County of Belden in the State of Columbia has grappled with an issue similar to Mr. Wongs. In *Westlund v. Palladin Farms*, the court held that because the proposed class wage violations varied from different groups of employees of a particular employer, they could not be considered a class because they did not meet requirements 2-4 of FRCP 23. Although this case is from a different county, it will still be persuasive because the facts are very similar to ours. Similar to Mr. Wong's employer, the Palladin farm paid certain workers less than the minimum wage among a wide range of Labor Code section violations.

Here, Wong alleges that he was not paid for lunch breaks, overtime, or his last week of work. There are many hourly plant workers for Pavlik, anywhere between 350 and 400 with high turnover. This fact indicates that the class likely meets the numerosity requirement. However, he also mentioned that he, "can't say there was any one thing that applied to all the workers." Some of the cleanup crew is paid less than minimum wage. The butchers were usually able to recover for over time because Pavlik valued their work over the others. Wong even went as far to say that Pavlik would make "little side deals with individual employees, so it's hard to say whether any one thing affected more than just a few of the hourly workers." This type of inconsistency will prevent Wong from being a class representative because there is no commonality, typicality, or adequate representation of the class. Like in *Westlund*, the grievances are variable to an extent that Wong will not be able to establish the remaining requirements for maintenance of this action as a class action.

As to the back wages, if Wong can gather a large enough class of former employees that have a commonality of not receiving back wages from Pavlik they may be able to bring suit. However, under the UCL Wong cannot allege any

other violation in a class action because the other violations are not common amongst a numerous class.

Wong as a representative under PAGA on behalf of current and former employees for back wages without having to satisfy class certification requirements•

The Private Attorney General Act (PAGA) provides that an aggrieved employee may recover civil penalties against an alleged violator of the Labor Code. Section 2699 of the PAGA defines an "aggrieved employee" as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. Furthermore the PAGA provides that the aggrieved employee may bring a civil action on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Section 2699.3 of the PAGA sets out the requirements needed to commence an action under the Act. A more thorough analysis of this section will be completed below in the monetary relief section. However, the PAGA itself provides that an aggrieved employee may bring a class action on behalf of current and former employees.

In *Arentz v. Angelina Dairy, Inc.*, the Columbia Supreme Court found that under PAGA, traditional class action requirements need not be met to file a class action on behalf of himself and other employees. In *Arentz*, a former employee sued his employer alleging violations of the Labor Code on behalf of himself as well as other current and former employees of the defendant. Similar to Mr. Wong's situation, the employer in the *Arentz* decision violated the code by failing to pay all wages due, failing to provide pay stubs, failure to maintain adequate payroll records, failure to provide wages upon termination, and failure to provide meal and rest breaks.

Under the UCL, the court affirmed the notion that a class representative must meet the requirements set forth in FRCP 23 to bring the suit. However, the case is more important to our situation because it stands for the notion that the traditional class action requirements of FRCP 23 need not be met to file a class action under PAGA. The court found that the plaintiff in a class action under PAGA is acting as a "proxy or agent of the state's labor law enforcement agencies." *Id.* PAGA is different from the UCL section 17203 because it does not expressly require that representative actions comply with the Code of Procedure 382. *id.*

Furthermore, according to a 2010 Columbia Court of Appeals decision, *Talbott v Euphonic Synthesizers, LLC*, the legislative intent in enacting PAGA was to, "confer upon private parties the power theretofore reserved to state labor law enforcement agencies to bring representative actions to enforce Columbia's wage and hour laws."

Mr. Wong is alleging various violations of the Columbia Labor Code against Pavlik Foods. Those sections include section 201, 203, 206.5, 226, 226.7, 510, 512, and 1194. He should be able to bring this actions on behalf of a class because the Code of Procedure 382 requirements are not the same under the PAGA as they are for the UCL. Here, Mr. Wong is acting as labor enforcement and on behalf of the labor agencies in an essence. Thus, he will be able to bring this claim on behalf of former and current employees against Pavlik.

Pavlik may try to use the language in the *Arentz* case which states that the PAGA "auctorizes a representative action only for the purpose of seeking statutory penalties for labor code violations, and an action to recover civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties." However subsequent decisions have provided that private individuals standing in the shoes of the state labor law enforcement agencies can recover unpaid wages through private enforcement of section 558.

Further, section 2699 (d) states, "nothing in this part shall operate to limit an employee;s right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part." Section 558 of allows the labor commissioner to issue citations to revoer "both unpaid wages and civil penalties." *Talbott v Eupohonic Synthesizers, LLC*. Thus is pavlik tries to use the language of *Arentz* to limit it's holding, we have a valid argument against him.

Monetary relief

Under the UCL, who may recover civil penalties•

Section 17203 states "The court may make such orders or judgements as may be necessary to *restore to any person in interest* any money or property, real or personal, which may have been acquired by means of such unfair competition." This statutory language seems to indicate that the civil penalties recovered in a UCL action can be used to compensate any person. Meaning that if a person has alleged back pay violations, they should be able to recover those civil damages.

Section 17206 states, "Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, *which shall be assessed and recovered in a civil action brought in the name of the people of the State of Columbia by the Attorney General.*" (emphasis added). This seems to be recoverable by the Labor Commissioner/Agency. Fees like this are generally used to deter violations.

Under PAGA, are there any prerequisites needed before filing suit•

In order to proceed with an action under PAGA there are prerequisites we must complete. Section 2699.3 of PAGA states that prior to alleging a violation of any applicable provision of the Labor Code they must first meet the following requirement:

1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation. Thus, Mr. Wong must first give notice by certified mail to the Labor and Workforce Development Agency. The specific violations Mr. Wong alleges are included in the file under the Interoffice Memorandum regarding the possible violations of the Columbia Labor Code. Once that has been done he may commence suit.

Under PAGA, who keeps the civil penalties if they recover

Of the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 for the aggrieved employees. PAGA Section 2699(e). This further proves the notion that the aggrieved employee is acting as an agent of the Agency when he brings a case which alleges violations on behalf of his current and former coworkers. A majority of the civil penalties recovered goes towards the Agency.

Question #1 Final Word Count = 2001

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