

1 indeed undisputed; the parties differ primarily over the legal
2 conclusions that must be drawn from the facts. The undisputed
3 material facts as follows²:

4 **A. Background Facts**

5 Spherion is a staffing company that provides job assignments to
6 temporary/billable employees in California and throughout the United
7 States and Canada. Spherion supplies workers, both temporary and
8 direct hires, to its clients. (DSUF 1.)

9 Spherion recruits and hires its own employees and assigns them to
10 businesses to support or supplement their regular workforces; to
11 provide assistance in special work situations such as employee
12 absences, skill shortages, and seasonal workloads; and to perform
13 special assignments or projects. (DSUF 4.)

14 **B. Facts Relating to Plaintiff's Minimum Wage Claims.**

15 The typical procedure followed by Spherion when it receives a
16 customer order for temporary help is to first have a Spherion client
17 service representative review the Spherion database to determine which
18 employee's skills and preferences best match the particular customer's
19 needs. (DSUF 7.)³

20 _____
21 19, 36), they are incorporated herein.

22 ² Plaintiff argues that many of these facts are disputed.
23 However, instead of directing the Court to conflicting evidence,
24 Plaintiff's efforts consist mostly of argumentative assertions of
25 legal conclusions. The Court reviewed the evidence and determined
26 that each of the facts stated below is undisputed. Furthermore, only
27 a few purported disputes merit an explanation of why the "dispute" is
28 not genuine. Such explanations are provided in footnotes.

³ The Court rejects Plaintiff's argument that this fact is
disputed. The evidence Plaintiff's cites does not demonstrate that
employees "actively assist" Defendant in securing their placement.
Rather, the evidence demonstrates that employees simply keep Defendant

1 Spherion's representative then contacts the employee, describes
2 the prospective assignment, pay rate, and expected length of
3 assignment. If the employee accepts the assignment, he or she reports
4 directly to work at Spherion's customer's premises. (DSUF 8, 9.)⁴

5 Upon completion of the assignment (or in the case of ongoing
6 assignments, at the completion of each week of work), the employee is
7 required to record the hours worked, as verified by the customer, and
8 submit them to Spherion. (DSUF 10.)

9 Spherion uses the temporary employee's record of hours worked to
10 generate the employee's paychecks and customer invoices. Spherion's
11 temporary employees are paid weekly. (DSUF 11, 12.)

12 **C. Facts Relating to Plaintiff's Claims Under Labor Code sections**
13 **201 and 203.**

14 The nature of employment as a temporary worker with a temporary
15 services employer is that the work is typically intermittent, and
16 temps often have breaks between assignments that can vary from a few
17 days or weeks, to months. (DSUF 14, 16.)

18 Spherion's temporary employees generally understand that work
19 assignments they are provided by Spherion are typically not for a
20 definite period of time and, as such, are unpredictable in length, and

21 informed - by email or phone call - of their availability for
22 assignments. This does not conflict with - and in fact, is consistent
23 with - Defendant's assertion that its client service representatives
perform the task of matching up client requests with its employees'
skills and preferences.

24 ⁴ The Court rejects Plaintiff's argument that the latter
25 sentence asserts a disputed fact. There is some evidence that a
26 client may interview Defendant's employee prior to that employee being
27 given the assignment. However, the evidence indicates that these
28 interviews happened only occasionally. Most importantly, there is no
evidence that Plaintiff was ever required to participate in such an
interview. (See DSUF 32.) The fact as it applies to Plaintiff
remains undisputed.

1 that they have no expectation of payment immediately upon assignment
2 completion. (DSUF 22.)⁵

3 Plaintiff has never had a full-time position, but rather "worked
4 a lot of different temp assignments." (DSUF 23.) Prior to commencing
5 employment with Spherion in August 2004, Plaintiff worked for at least
6 ten (10) other staffing companies and, as a result, "understood how
7 the temporary assignment process worked." (DSUF 24.)

8 On August 5, 2004, Plaintiff completed the Spherion application
9 process through Spherion's Warner Bros. on-premises office, in
10 Burbank, California. (DSUF 26.) During her employment with Spherion,
11 Plaintiff worked at more than 15 different assignments at Warner
12 Bros., ranging in time from one day to several weeks. (DSUF 34.)
13 While an employee of Spherion, Plaintiff never interviewed directly
14 with Warner Bros., or for any other Spherion client, for any temporary
15 assignments. (DSUF 32.)⁶

16 During the entire time period that Plaintiff was employed by
17 Spherion, she always emailed Spherion when she was available for
18 assignments and informed Spherion of her availability for additional
19 assignments. (DSUF 44.) When Plaintiff submitted her timesheet for
20 the work she performed on August 22, 2005, she informed Spherion that
21 she was "available for work" the following day. (DSUF 48.) At the
22

23 ⁵ Plaintiff's citation to sections of the California Labor Code
24 does not dispute this fact.

25 ⁶ The Court reviewed the cited portions of Plaintiff's
26 deposition. These portions discuss the process by which Plaintiff
27 received assignments. In each of the examples, Plaintiff was directed
28 to appear at a client's location to begin her assignment. In none of
the examples did Plaintiff state that the assignment process involved
being interviewed by the client. The cited deposition testimony
therefore supports the fact asserted.

1 time Plaintiff submitted her timesheet for the work she performed on
2 August 22, 2005, Plaintiff "had no idea that it was going to be [her]
3 last assignment." (DSUF 49.)

4 As demonstrated by the telephone calls and emails exchanged
5 between Plaintiff and Spherion during August, September, and October
6 2005, Plaintiff continued to seek additional assignments from Spherion
7 until at least October 15, 2005. (DSUF 45.) Spherion informed
8 Plaintiff on numerous occasions, after August 22, 2005, that it was
9 seeking additional assignments for her. No one from Spherion ever
10 indicated anything to the contrary or informed her that she would not
11 be provided with additional assignments. (DSUF 51, 52.)

12 Other than on perhaps one occasion, Plaintiff received her
13 compensation from Spherion through direct deposit. (DSUF 55.) In
14 addition to having her compensation direct-deposited into her bank
15 account, Plaintiff always received a hard copy version of her wage
16 statement. (DSUF 56.)

17 Each week that she was employed by Spherion, Plaintiff followed
18 the same basic procedures to complete the compensation process. After
19 obtaining her Warner Bros. supervisor's approval of her timesheets at
20 the end of each week or assignment, Plaintiff would submit the
21 timesheets to Spherion. Plaintiff typically submitted the completed
22 timesheets on Friday after her final shift of the week ended. (DSUF
23 60-64; PSUF 19.) By the following Friday, Plaintiff received her
24 direct deposit payment in her bank account. (DSUF 65.)

25 On September 2, 2005, Plaintiff received her final compensation
26 from Spherion. (DSUF 66.) Because Spherion did not provide Plaintiff
27 with any other temporary assignment thereafter - an outcome that
28 neither Spherion nor Plaintiff knew would transpire at that time - the

1 September 2, 2005 paycheck turned out to be Spherion's final paycheck
2 to Plaintiff. (DSUF 67.)

3 **D. Facts Relating to Claims that Spherion Issued Insufficient Wage**
4 **Statements.**

5 Spherion included an employee identification number on each of
6 Plaintiff's wage statements. (DSUF 75.)

7 Spherion included the name and address of Plaintiff's employer on
8 the wage statements. The wage statements refer to "Spherion Pacific
9 Work, LLC." The full name of Plaintiff's employers is Spherion
10 Pacific Workforce, LLC. (DSUF 76 and Pl.'s Response to DSUF 76; PSUF
11 24, 26, 36.)

12 Each time Plaintiff received her wage statement, she reviewed the
13 document and "always believe[d] it to be correct." (DSUF 57.)

14 Plaintiff never complained to anyone at Spherion that she
15 perceived any problems with her wage statement. (DSUF 58.)

16 **II. LEGAL STANDARD**

17 Summary judgment shall be granted where "the pleadings, the
18 discovery and disclosure materials on file, and any affidavits show
19 that there is no genuine issue as to any material fact and that the
20 movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
21 56(c). The moving party has the burden of demonstrating the absence
22 of a genuine issue of fact for trial. Anderson v. Liberty Lobby,
23 Inc., 477 U.S. 242, 256 (1986).

24 If, as here, the non-moving party has the burden of proof at
25 trial, the moving party has no burden to negate the opponent's claim.
26 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The moving party
27 does not have the burden to produce any evidence showing the absence
28 of a genuine issue of material fact. Id. at 325. "Instead, . . . the

1 burden on the moving party may be discharged by 'showing' -- that is,
2 pointing out to the district court -- that there is an absence of
3 evidence to support the nonmoving party's case." Id. Once the moving
4 party satisfies this initial burden, "an adverse party may not rest
5 upon the mere allegations or denials of the adverse party's pleading
6 . . . [Rather,] the adverse party's response . . . must set forth
7 specific facts showing that there is a genuine issue for trial." Fed.
8 R. Civ. P. 56(e) (emphasis added).

9 A "genuine issue" of material fact exists only when the nonmoving
10 party makes a sufficient showing to establish the essential elements
11 of that party's case, and on which that party would bear the burden of
12 proof at trial. Celotex, 477 U.S. at 322-23. An issue of fact is a
13 genuine issue if it reasonably can be resolved in favor of either
14 party. Anderson, 477 U.S. at 250-51. "[M]ere disagreement or the
15 bald assertion that a genuine issue of material fact exists" does not
16 preclude summary judgment. Harper v. Wallingford, 877 F.2d 728, 731
17 (9th Cir. 1989). "The mere existence of a scintilla of evidence in
18 support of the plaintiff's position will be insufficient; there must
19 be evidence on which the jury could reasonably find for the
20 plaintiff." Anderson, 477 U.S. at 252. The "opponent must do more
21 than simply show that there is some metaphysical doubt as to the
22 material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
23 475 U.S. 574, 586 (1986). "Only disputes over facts that might affect
24 the outcome of the suit under the governing law will properly preclude
25 the entry of summary judgment." Anderson, 477 U.S. at 248.

26 "[A] district court is not entitled to weigh the evidence and
27 resolve disputed underlying factual issues." Chevron Corp. v.
28 Pennzoil Co., 974 F.2d 1156, 1161 (9th Cir. 1992). The evidence of

1 the nonmovant is to be believed, and all justifiable inferences are to
2 be drawn in favor of the nonmovant. Anderson, 477 U.S. at 255. "On
3 the other hand, the movant's uncontradicted factual allegations
4 ordinarily are accepted." John v. City of El Monte, 505 F.3d 907, 912
5 (9th Cir. 2007). Furthermore, the court must view the evidence
6 presented "through the prism of the substantive evidentiary burden."
7 Anderson, 477 U.S. at 254.

8 III. ANALYSIS

9 **A. Defendant Is Entitled to Judgment on Plaintiff's Claim Under 10 Labor Code Section 203 (first claim for relief) because 11 Defendant's Payments of Wages were Timely Under Labor Code Section 201.3(b)(1), and Defendant did not "Discharge" Plaintiff When Each of her Temporary Assignments Ended.**

12 Plaintiff's first claim is that she is entitled to continuing
13 wages under Labor Code section 203 because Defendant failed to pay her
14 wages within the time period required by Labor Code Section 201.
15 Section 203 provides, in relevant part,

16
17 If an employer willfully fails to pay, without abatement or
18 reduction, in accordance with Section[] 201 . . . any wages of an
19 employee who is discharged or who quits, the wages of the
20 employee shall continue as a penalty.

21
22 Section 201 provides, "If an employer discharges an employee, the
23 wages earned and unpaid at the time of the discharge are due and
24 payable immediately." Plaintiff claims that each time one of her
25 temporary assignments ended, she was "discharged" within the meaning
26 of section 201, thereby triggering Defendant's obligation to
27 "immediately" pay her unpaid wages. Instead of paying Plaintiff's
28 wages "immediately," however, Defendant paid her wages in accord with

1 its routine schedule, issuing paychecks each Friday for all hours
2 worked the previous workweek and submitted on timesheets by the Friday
3 of that previous workweek. There are no allegations that Defendant's
4 routine weekly pay schedule violated the law. As both parties
5 acknowledge, resolution of Plaintiff's claim turns on whether
6 Defendant "discharged" Plaintiff each time one of her temporary
7 assignments ended, thus entitling her to "immediate" payment of wages
8 under section 201.

9 In its papers, Defendant argued that the California Legislature's
10 passage of California Assembly Bill 1710 demonstrates the
11 Legislature's intent that the end of a temporary assignment in the
12 temporary staffing employment context is not a discharge under Labor
13 Code section 201. Even though Governor Schwarzenegger vetoed the
14 Bill, Defendant argued that the bill was still probative of
15 legislative intent, especially because the Governor supported the
16 provisions relevant to this case, and vetoed the bill for reasons
17 unrelated to those provisions. Plaintiff did not challenge
18 Defendant's analysis of the proposed legislation; Plaintiff simply
19 argued that because the Governor vetoed the bill, the Court cannot
20 rely on it to discern legislative intent.

21 However, after briefing on the motions was complete, the
22 Legislature passed another bill addressing this issue, Senate Bill
23 940, which was signed into law by Governor Schwarzenegger on July 22,
24 2008. As it pertains to this case, SB 940 added section 201.3 to the
25 Labor code, which states, in relevant part:

26
27 201.3(a)(1) "Temporary services employer" means an employing unit
28 that contracts with clients or customers to supply workers to

1 perform services for the client or customers and that performs
2 all of the following functions [including negotiating with
3 clients and customers for the services, assigning workers,
4 setting the pay rates of workers and paying them from its own
5 accounts, and retaining the right to hire and fire workers].
6 201.3(b)(1) Except as provided in paragraphs (2) to (5),
7 inclusive, if an employee of a temporary services employer is
8 assigned to work for a client, that employee's wages are due and
9 payable no less frequently than weekly, regardless of when the
10 assignment ends, and wages for work performed during any calendar
11 week shall be due and payable not later than the regular payday
12 of the following calendar week. A temporary services employer
13 shall be deemed to have timely paid wages upon completion of an
14 assignment if wages are paid in compliance with this subdivision.
15 . . .(4) If an employee of a temporary services employer is
16 assigned to work for a client and is discharged by the temporary
17 services employer or leasing employer, wages are due and payable
18 as provided in Section 201.

19
20 These provisions clearly demonstrate that Plaintiff's claim for
21 continuing wages fails as a matter of law. The undisputed facts show
22 that Defendant is a "temporary services employer" under section
23 201.3(a)(1). (DSUF 1, 2, 7-12.) Defendant also paid Plaintiff
24 weekly, and not later than the regular payday of the following
25 calendar week, in accordance with section 201.3(b)(1). Defendant's
26 payment of Plaintiff's wages was therefore timely. The statute also
27 specifically addresses the issue Plaintiff's claim raises by providing
28 that, "A temporary services employer shall be deemed to have timely

1 paid wages **upon completion of an assignment** if wages are paid in
2 compliance with this subdivision." (emphasis added). Thus, the ending
3 of a temporary assignment does not trigger any payment obligations
4 different from those set out in 201.3(b)(1), with which Defendant
5 complied. Section 201.3(b)(1) further demonstrates the distinction
6 between the "end of a temporary assignment" and a "discharge,"
7 explaining that a discharge still triggers section 201.

8 Furthermore, from the legislative history of section 201.3, it is
9 clear that its enactment effects merely a clarification of existing
10 law, rather than a change in the law. See Senate Bill Analysis, SB
11 940, at p. 5, available at
12 <[http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0901-0950/sb_940_cfa_200](http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0901-0950/sb_940_cfa_20080624_160423_sen_floor.html)
13 [80624_160423_sen_floor.html](http://info.sen.ca.gov/pub/07-08/bill/sen/sb_0901-0950/sb_940_cfa_20080624_160423_sen_floor.html)>> (explaining, "This bill clarifies the
14 issue [of when temporary employees are due their wages after an
15 assignment ends] by explicitly stating that an employee of a temporary
16 services employer will be paid weekly, regardless of when the
17 assignment ends. . ."); see also id. p. 6 (characterizing SB 940 as
18 "clarifying that the completion of an assignment by an employee of a
19 temporary services employer is not a discharge. . .") Thus, because
20 section 201.3 is a mere clarification of existing law, it raises no
21 concerns about retroactive application in this case.

22 Even had section 201.3 not been enacted, it is still clear that
23 Plaintiff was not "discharged" from her employment with Defendant each
24 time one of her temporary assignments ended. The nature of
25 Plaintiff's job as a temp with a temporary services employer was that
26 her work would be intermittent; indeed, temps often have breaks
27 between assignments that can vary from a few days or weeks, to months.
28 (DSUF 14, 16.) Defendant's employees do not expect payment

1 immediately upon assignment completion. (DSUF 22.) From her previous
2 experience as a temp worker for at least ten other staffing companies,
3 Plaintiff also understood that this was how Defendant's assignment
4 process worked. (DSUF 23-24.) Based upon these facts, Plaintiff's
5 employment with Defendant included, by definition, the likelihood of
6 having time between assignments when she would not be working.
7 Plaintiff understood this. (DSUF 24.) The various communications
8 between Plaintiff and Defendant in which Plaintiff kept Defendant
9 informed of her availability and Defendant indicated it was looking
10 for assignments for Plaintiff (DSUF 44, 45) also demonstrate that
11 between assignments, both parties still considered Plaintiff to be
12 Defendant's employee.

13 Finally, none of the authorities to which Plaintiff cites
14 persuade the Court that Plaintiff was "discharged" from Defendant's
15 employ each time one of her temporary assignments ended. For example,
16 in Smith v. Superior Court (L'Oreal), 39 Cal. 4th 77 (2006) the
17 California Supreme Court addressed the application of sections 201
18 through 203 to an employee who was hired for a one-day job as a hair
19 model. In L'Oreal, the parties' express understanding was that the
20 plaintiff's employment would end upon her completion of the one-day
21 assignment. Based upon that fact, the Court determined that the
22 plaintiff was "discharged" when her one-day assignment ended. Thus,
23 the L'Oreal Court had no occasion to discuss whether the end of an
24 assignment for a temporary employee of a temporary staffing agency
25 rendered the employee "discharged" within the meaning of section 201.
26 Finally, insofar as it was unclear how L'Oreal's discussion of section
27 201 might have been applied to temporary services employees, SB 940
28 clarified this issue. See Senate Bill Analysis, SB 940, at p. 4-5

1 (explaining that the bill's purpose is to address concerns that
2 L'Oreal may be applied too broadly to the temporary services context.)

3 Notwithstanding the legislative clarification, L'Oreal's general
4 guidance for determining when an employee is "discharged" under
5 section 201 is still instructive in this case and supports the
6 conclusion that Plaintiff was not "discharged." In construing the
7 term "discharge," the L'Oreal Court stated that a "commonly understood
8 meaning of 'discharge' includes the **action of an employer** who, having
9 hired an employee to work on a particular job or for a specific term
10 of service, **formally releases the employee and ends the employment**
11 **relationship** at the point the job or service term is deemed complete."
12 L'Oreal, 39 Cal.4th at 84 (emphasis added). Here, as a factual
13 matter, Defendant took no action to formally release Plaintiff and end
14 the employment relationship each time one of Plaintiff's temporary
15 assignments ended. Instead, the evidence shows that, at all relevant
16 times, Defendant and Plaintiff maintained a continuous employer-
17 employee relationship even when Plaintiff was not engaged in an
18 assignment.

19 For the foregoing reasons, Defendant is entitled to judgment on
20 Plaintiff's first cause of action for continuing wages under Labor
21 Code section 203.

22 **B. Defendant Is Entitled to Judgment on Plaintiff's Claim Under**
23 **Labor Code Sections 510, 558, and 1194 (second claim for relief)**
24 **and her Claim Under FLSA Section 206 (third claim for relief)**
25 **Because there is No Evidence that Defendant Failed to Pay**
26 **Plaintiff for Hours she Worked.**

27 Plaintiff's second and third claims for relief for violation of
28 minimum wage requirements assert that Defendant failed to pay her for
hours worked. The FAC does not include factual allegations specifying
the circumstances supporting the claim. However, the parties' papers

1 make clear that Plaintiff is seeking compensation (1) for time worked
2 reviewing and completing paperwork around the beginning of her
3 employment with Defendant, and (2) for time spent "actively searching"
4 for new assignments. (Pl.'s Opp'n 7:18-22, 14:27-15:5; Pl.'s Mot.
5 6:22-24.)⁷ Plaintiff has failed to raise a triable issue of material
6 fact on either basis for this claim.

7 Plaintiff testified at deposition that, with perhaps one
8 exception, Defendant always paid her through direct deposit, and that
9 she reviewed a hard copy of each and every wage statement she received
10 and always believed each one to be correct, including with regard to
11 her compensation. (DSUF 57; Def.'s Resp. PSUF 20.) Furthermore,
12 Plaintiff admitted that the amounts Defendant paid her were based on
13 timesheets she personally completed, and that the paychecks always
14 included the amounts Plaintiff herself recorded on her timesheets.
15 (Def.'s Response to PSUF 20.) Finally, Plaintiff never complained to
16 anyone at Defendant that there was any problem with her wage
17 statement. (DSUF 58.) These admissions foreclose Plaintiff's current
18 claims that Defendant failed to pay her for time she worked.

19 In her declaration, Plaintiff attempts to raise a genuine issue
20 of fact as to wages due her for orientation, stating conclusorily that

21
22 ⁷ In her own Motion, Plaintiff appears to have abandoned this
23 claim to the extent it is based on "actively searching" for new
24 assignments: her brief addresses only the one hour of orientation, and
25 her statement of facts recites only two facts in support of this
26 claim, both relating to the one hour of orientation. Because
27 Plaintiff also states that resolution of the entirety of her motion in
28 her favor would leave nothing remaining for trial, see Pl.'s Mot.
2:15-17, the Court deems Plaintiff to have abandoned her claim based
on Defendant's alleged failure to pay her for time spent "actively
searching" for work between assignments. The Court will nevertheless
address the claim on its merits because it was raised in Defendant's
Motion.

1 she was never paid for one hour she spent on the orientation paperwork
2 at the start of her employment. (Elliot Decl. ¶ 4.) However, this
3 late-breaking assertion contradicts Plaintiff's earlier sworn
4 testimony, summarized above, to the effect that she received all of
5 her wages. Plaintiff makes no attempt to reconcile her testimony with
6 her current statement, nor does she present any evidence that she was
7 not compensated for this time other than her conclusory allegation.
8 This unsubstantiated and contradictory statement is ineffective to
9 raise a triable issue of fact. See Kennedy v. Allied Mut. Ins. Co.,
10 952 F. 2d 262, 266 (9th Cir. 1991) (holding that party cannot create
11 issue of material fact with an affidavit contradicting the party's own
12 prior deposition testimony).

13 For the same reason - that it contradicts her prior sworn
14 testimony - Plaintiff's contention that she was owed compensation for
15 "work [she] engaged in between temporary placements" (Pl.'s Opp'n
16 15:3-5) fails to raise a genuine issue of material fact. This
17 contention fails for the additional reason that the only evidence
18 supporting Plaintiff's claim is that she contacted Defendant from time
19 to time simply to inform Defendant of her availability between
20 temporary assignments. Plaintiff points to no evidence - such as her
21 own deposition testimony - that her efforts to "actively search" for
22 new assignments consisted of anything more than these *de minimis*
23 contacts with Defendant to keep Defendant updated on her availability.
24 For example, to "actively search" for new assignments might have
25 involved interviewing with Defendant's clients. Indeed, Plaintiff's
26 Motion baldly asserts that "she was not paid for the time spent
27 interviewing for temporary assignments with Defendant's client, Warner
28 Bros." (Pl.'s Mot. 1:24-25.) However, glaringly absent from

1 Plaintiff's Motion is any citation to any evidence showing that she
2 did, in fact, interview with Warner Bros. or any of Defendant's other
3 clients. Indeed, Plaintiff's assertion that she "interviewed" is
4 flatly disproved by the evidence cited in the parties' papers, none of
5 which shows that Plaintiff had to interview with any of Defendant's
6 clients. (DSUF 32.) Plaintiff makes no other allegations as to what
7 this "active searching" might have entailed, nor has she pointed to
8 any evidence of "active searching" she might have actually done; nor
9 has she pointed to evidence of any between-assignment work other than
10 her *de minimis* communications with Defendant.

11 For the foregoing reasons, Plaintiff has failed to raise a
12 triable issue of fact on her claim that she was denied wages for hours
13 worked. Defendant is therefore entitled to judgment on Plaintiff's
14 second and third claims for relief.

15 **C. Defendant Is Entitled to Judgment on Plaintiff's Claim Under**
16 **Labor Code Section 226 (fourth claim for relief) for Failing to**
17 **Provide Required Information on Wage Statements.**

18 Plaintiff's fourth claim alleges that Defendant's wage statements
19 failed to include information that Labor Code section 226 required to
20 be included. Plaintiff's FAC specifies that the wage statements
21 "violate the law by failing to provide the social security number of
22 the employee, and name and address of the legal entity that is the
23 employer" (FAC ¶ 34) in violation of sections 226(a)(7) and (8).
24 Defendant moves for judgment as to each of these alleged violations;
25 Plaintiff moves for judgment only as to Defendant's alleged failure to
26 state the employer's name on the wage statements.⁸

27 ⁸ Because Plaintiff also states that resolution of the entirety
28 of her motion in her favor would leave nothing remaining for trial,
see Pl.'s Mot. 2:15-17, the Court deems Plaintiff to have abandoned

1 Defendant does not contest that Plaintiff's social security
2 number was not shown on her wage statements, but argues that it did
3 not violate the law by this omission. Specifically, Defendant
4 contends that, in lieu of her social security number, it showed
5 Plaintiff's employee identification number on each of her wage
6 statements, as permitted by Labor Code section 226(a)(7).

7 Plaintiff argues, however, that section 226(a)(7) did not become
8 effective until January 1, 2005. As such, Plaintiff argues, every
9 wage statement she received prior to January 1, 2005, violated section
10 226(a)(7) because it failed to include her social security number and
11 the alternative of using the employee identification number was not
12 yet available.

13 However, the one-year statute of limitations set forth in Cal.
14 Code Civ. Proc. section 340 applies to Plaintiff's claims under this
15 section because she is seeking "penalties."⁹ Because Plaintiff filed
16 her Complaint on July 13, 2006, her claims under section 226 apply
17 only to wage statements provided to her on or after July 13, 2005.
18 Accordingly, none of the wage statements Plaintiff received prior to
19

20
21 her claim based on the alleged failure to include her social security
22 number on the wage statements. The Court will nevertheless address
the claim on its merits because it was raised in Defendant's Motion.

23 ⁹ It is clear that Plaintiff's claim under section 226 is
24 limited to statutory "penalties" because there is absolutely no
25 evidence that she suffered any actual harm or damages. As such, Cal.
26 Code Civ. Proc. section 340 applies and the claim is subject to a one-
27 year statute of limitations. In addition, although Plaintiff
28 challenged the application of section 340 by stating "the issue is
nowhere near as clear-cut as Defendant contends," Plaintiff's response
is wholly superficial. For example, Plaintiff fails to assert an
alternative theory as to what statute of limitations applies to this
claim. As such, Plaintiff has, in effect, waived argument on the
issue.

1 January 1, 2005, are relevant to this component of her claim. Because
2 it is undisputed that all the wage statements provided to Plaintiff
3 after July 13, 2005 included her employee number (DSUF 75), there is
4 no disputed issue of material fact regarding whether Defendant
5 complied with section 226(a)(7). Defendant is entitled to judgment.

6 The facts relating to Defendant's alleged failure to include the
7 name of Plaintiff's employer on the wage statements are also
8 undisputed. Defendant included the name and address of Plaintiff's
9 employer on the wage statements. However, although the wage
10 statements refer to "Spherion Pacific Work, LLC," the full name of
11 Plaintiff's employer is "Spherion Pacific Workforce, LLC." (DSUF 76
12 and Pl.'s Response to DSUF 76; PSUF 24, 26, 36.) The Court notes
13 that, insofar as Plaintiff may have been asserting a claim that
14 Defendant failed to include its address on the wage statements, she
15 has wholly abandoned that claim: in response to Defendant's fact 76,
16 she concedes that the wage statements included the address because she
17 only contests that fact as it relates to her employer's name. Thus,
18 the issue is whether, by referring to itself on the wage statements
19 with the truncated name "Spherion Pacific Work, LLC," rather than with
20 its complete name "Spherion Pacific Workforce, LLC," Defendant
21 violated section 226(a)(8).

22 Section 226(a)(8) states that an employer must include on its
23 wage statements "the name and address of the legal entity that is the
24 employer." There is no dispute that Defendant was the "legal entity"
25 that was Plaintiff's employer, and that Defendant indicated its name
26 on the wage statements, albeit in a slightly truncated form.
27 Defendant did not violate this section merely by slightly truncating
28 its name on the wage statements. If the legislature had intended to

1 require an employer to show its complete name on wage statements, it
2 would have stated so in this section. Indeed, the specificity
3 required in the remainder of section 226(a) - requiring, for example,
4 various subcategories of information relating to pay rates, hours
5 worked, and deductions - demonstrates that, when the legislature
6 drafted this statute, it well knew how to require highly detailed
7 information on wage statements. By contrast, instead of requiring an
8 employer to state its "complete" or "registered" name, section
9 226(a)(8) only requires the employer to state its "name and address."
10 Because Defendant was the "legal entity" that employed Plaintiff, and
11 because Defendant showed its "name and address," Defendant complied
12 with section 226(a)(8).

13 The scant case law applying section 226(a)(8) does not dissuade
14 the Court from this conclusion. The only case the parties cited
15 applying this subsection is Cicairos v. Summit Logistics, Inc., 133
16 Cal. App. 4th 949 (2005). In Cicairos, the Court reversed the trial
17 court's grant of summary judgment for the employer on several
18 employment-related claims, including a claim under section 226(a)(8)
19 for failing to show the employer's name and address on wage
20 statements. However, in Cicairos, the documents that the employer
21 contended were proper wage statements were fraught with "anomalies and
22 confusing elements" insofar as they purported to itemize the hours the
23 employee worked, and they completely lacked the employer's name and
24 address. Cicairos, 133 Cal. App. 4th at 960-961. The employer argued
25 that other documents called "driver trip summaries" remedied the
26 deficiencies in the wage statements, including the violation of
27 section 226(a)(8). The Court disagreed. On their face, the "driver
28 trip summaries" did not give an accurate report of the hours the

1 employee worked. Furthermore, instead of showing the employer's name,
2 which was "Summit Logistics, Inc.", the "driver trip summaries" merely
3 included the word "SUMMIT" in a logo at the top. Not surprisingly,
4 the Court found that the employer's use of one word in a logo on the
5 top of "driver trip summaries" was insufficient to show on wage
6 statements "the name [] of the legal entity that is the employer."
7 The "driver trip summaries" also lacked the employer's address. The
8 employer thus violated both components of section 226(a)(8).

9 Here, by contrast, far from relying on one word in a mere logo on
10 the top of documents that are not even wage statements, Defendant
11 referred to itself in plain text, in the body of its wage statements,
12 along with its address, thus clearly identifying itself as the
13 employer. Cicairos is therefore factually distinguishable. Of
14 course, an employer using a shortened name or abbreviation that
15 renders the name confusing or unintelligible may be violating section
16 226(a)(8). However, this is not such a case. As a matter of law,
17 Defendant's self-identification on the wage statements is sufficient
18 to satisfy section 226(a)(8).

19 Furthermore, even if Defendant's use of a slightly-truncated name
20 on its wage statements may be viewed as a technical violation of
21 section 226(a)(8), Plaintiff cannot recover for these violations
22 because she did not "suffer injury" as a result. Section 226(e) sets
23 forth the conditions under which an employee can recover monetary
24 damages for violations of section 226(a):

25
26 226(e) An employee **suffering injury** as a result of a knowing and
27 intentional failure by an employer to comply with subdivision (a)
28 is entitled to recover the greater of all actual damages or fifty

1 dollars (\$50) for the initial pay period in which a violation
2 occurs and one hundred dollars (\$100) per employee for each
3 violation in a subsequent pay period, not exceeding an aggregate
4 penalty of four thousand dollars (\$4,000), and is entitled to an
5 award of costs and reasonable attorney's fees. (emphasis added.)
6

7 Plaintiff argues that any violation of section 226(a)
8 automatically triggers an employee's entitlement to damages and/or
9 penalties under section 226(e). However, this reading of section
10 226(e) ignores its plain language, which includes "suffering injury"
11 as a prerequisite for an employee's recovery of damages or penalties
12 for an employer's failure to comply with section 226(a). California
13 courts consistently distinguish between a defendant's misconduct, on
14 one hand, and a plaintiff's injury on the other. See, e.g., Steketee
15 v. Lintz, Williams & Rothberg, 38 Cal. 3d 46, 54 (1985) (stating that
16 "'Wrongful act' and 'injury' are not synonymous. The word 'injury'
17 signifies both the negligent cause and the damaging effect of the
18 alleged wrongful act and not the act itself.") (citations omitted);
19 Lueter v. State of Cal., 94 Cal. App. 4th 1285, 1303 (2002) ("'Injury'
20 refers to the fact of harm suffered by the plaintiff due to the
21 defendant's conduct.") By employing the term "suffering injury," the
22 statute clearly requires that an employee is not eligible to recover
23 for violations of section 226(a) unless he or she demonstrates some
24 injury from the employer's violation.

25 Plaintiff's proposed construction effectively excises the phrase
26 "suffering injury" from section 226(e). It therefore violates the
27 canons of statutory construction requiring the Court to "give effect
28 to statutes according to the usual, ordinary import of the language

1 used in framing. . . [to] give significance [] to every word, phrase,
2 sentence and part of an act. . . [and avoiding] a construction making
3 some words surplusage." Steketee, 38 Cal. 3d at 51. Had the
4 legislature intended to expose an employer to liability for violations
5 regardless of whether any employee suffered injury, it could have
6 drafted the statute to read, "Any employee whose employer fails to
7 comply with subdivision (a) is entitled to recover. . ." Instead, the
8 Legislature drafted the provision with the qualification that an
9 "employee **suffering injury**" may recover for violations.

10 The cases Plaintiff cites do not counsel a different result. See,
11 e.g., Pl.'s Reply at 19:1-21:22, discussing Zavala v. Scott Bros.
12 Dairy, Inc., 143 Cal. App. 4th 585 (2006); Wang v. Chinese Daily News,
13 Inc., 435 F. Supp. 2d 1042 (C.D. Cal. 2006); and Perez v. Safety-Kleen
14 Sys., 2007 U.S. Dist. LEXIS 48308 (N.D. Cal. filed June 27, 2007).
15 Each of these cases involved wage statements that failed to comply
16 with the subsections of section 226(a) relating to itemizing pay
17 rates, hours worked, and deductions. In each instance, the court
18 identified some specific injury caused by the inaccuracy. These
19 injuries included the possibility of not being paid overtime, employee
20 confusion over whether they received all wages owed them, difficulty
21 and expense involved in reconstructing pay records, and forcing
22 employees to make mathematical computations to analyze whether the
23 wages paid in fact compensated them for all hours worked. Thus, each
24 of the cases upon which Plaintiff relies for her argument that she
25 need not show "injury" in fact involved some form of injury, ranging
26 from actual lost wages, to the possibility of lost wages and
27 confusion. There is no evidence whatsoever that Plaintiff here
28 "suffered injury" of any sort due to Defendant's use of a slightly

1 truncated name on the wage statements it issued to Plaintiff.

2 Plaintiff has failed to show a triable issue of fact on this claim,
3 and Defendant is entitled to judgment.

4 As both parties recognize, Plaintiff's claim under the Private
5 Attorneys General Act is wholly dependent upon her other claims.
6 Because all of Plaintiff's other claims fail as a matter of law, so
7 does her PAGA claim. Defendant is therefore entitled to judgment on
8 Plaintiff's fifth claim for relief.

9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court hereby **GRANTS** Defendant's
11 Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary
12 Judgment.

13 **SO ORDERED.**

14 **DATED:** _____

15 _____
16 **AUDREY B. COLLINS**
17 **UNITED STATES DISTRICT JUDGE**
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