

1 had purchased a case of beer. The following day, Villanueva called him at approximately
2 noon and advised him that he was discharged. She further informed him that he could
3 pick up his check on the next regular payday, March 9, 2001.

4 At the time of his termination, the Plaintiff was owed \$203.00 in wages for twenty-
5 eight (28) hours of work and \$51.84 in mileage expenses for attending training classes in
6 Ventura. He testified that he went to the store on three (3) occasions during the course of
7 the following week to request payment of his final wages. By that time, Villanueva had
8 also been terminated by the Defendant and her assistant, Jose Ramirez, was in charge. The
9 Plaintiff testified that Ramirez reiterated that he must wait until pay day to receive his
10 check.

11 The Plaintiff testified that he received his final wages on March 9, 2001, and his
12 expense check one (1) week later. The wage check was dated March 5, 2001 and
13 negotiated on March 14, 2001.

14 It is the Defendant's position that the Plaintiff was "indefinitely suspended" on
15 March 1, 2001. According to an unsigned and undated statement purportedly authored by
16 Ramirez, the Plaintiff was first informed that he had been discharged on March 6, 2001,
17 and was given his final check at that time. The Defendant offered absolutely no
18 documentary evidence or direct witness testimony to support this version of the events.

19 20 LEGAL ANALYSIS

21 In these proceedings, the Plaintiff has the burden of proving every element of his
22 case by a preponderance of the evidence (Evidence Code § 500). After credible testimony
23 and evidence by the Plaintiff, the burden shifts to the Defendant to disprove the Plaintiff's
24 allegations.

25 In the instant matter, the Defendant offered absolutely no evidence or testimony to
26 refute the Plaintiff's testimony. The unsigned and undated statement, purportedly made
27 by Ramirez, carries no weight. The Defendant failed to produce either of the two (2)

1 witnesses, Villanueva or Ramirez, who may have been able to substantiate the company's
2 position. Any "suspension," if indeed there was one, was merely a subterfuge to buy time
3 so that the Plaintiff's final pay check could be prepared and issued from the Defendant's
4 Washington headquarters.

5 Numerous California courts have recognized that wages are not ordinary debts and
6 that prompt payment of wages upon termination is a fundamental public policy (*Gould v.*
7 *Maryland Sound Industries* (1995) 31 Cal. App. 1147). Labor Code § 201 requires that all
8 earned wages of an employee who is discharged be paid immediately at the time of
9 termination.

10 Labor Code § 203 provides that, if an employer willfully fails to pay any wages to a
11 discharged employee, the wages of the employee shall continue as a penalty from the due
12 date thereof at the same rate until paid, up to a maximum of thirty (30) days. As used in §
13 203, "willful" merely means that the employer failed to perform an act which the law
14 requires (*Davis v. Morris* (1940) 37 Cal.App.2d 269).

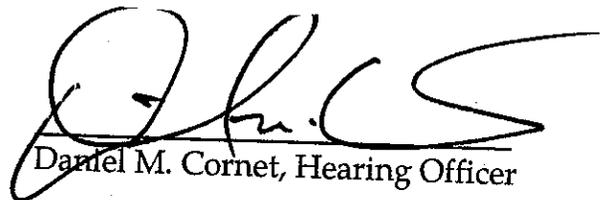
15 All of the Plaintiff's earned wages were due and payable on March 2, 2001, but
16 were not paid until March 9, 2001, a delay of seven (7) days. Under these circumstances,
17 the Defendant's failure to pay is held to be willful and the Plaintiff is entitled to receive
18 \$406.00 in waiting time penalties, computed at \$58.00 per day for seven (7) days.

19
20 CONCLUSION

21 For all of the reasons set forth above, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff receive \$406.00 in waiting time penalties.

23
24 Dated: July 3, 2001

25 
26 Daniel M. Cornet, Hearing Officer