

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Ruth Ann Kwan

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Attorneys for Plaintiff,
PEDRO CEREN, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Pedro Ceren an individual, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiffs,

vs.

American Medical Response Ambulance
Service, Inc., a Delaware corporation,
American Medical Response of Southern
California, a California corporation, and DOES
1-50, inclusive,

Defendants.

) Case No.:

20STCV15983

) **REPRESENTATIVE ACTION**

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

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

4 NATURE OF THE ACTION

5
6 1. Plaintiff Pedro Ceren worked for defendants American Medical Response Service, Inc.,
7 American Medical Response of Southern California, and Does 1-50 (collectively “Defendants”)
8 from 2014-2017, and again from 2018-2019. Plaintiff brings this action pursuant to the Private
9 Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative
10 basis. All current and former employees of Defendants within one year of serving notice on the
11 LWDA to the present are aggrieved employees.

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

21 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
22 worked, including overtime hours worked; (2) failing to reimburse employees for required
23 business expenses; (3) failing to timely pay all wages owed; and (4) failing to provide accurate
24 wage statements and maintain accurate payroll records. Defendants are therefore liable for civil
25 penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor
26 Code §2698 *et seq.*, as described more fully herein.

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1 **THE PARTIES**

2 7. Plaintiff Pedro Ceren is a resident of the State of California and was employed as an
3 hourly, nonexempt employee of Defendants until 2019.

4 8. Defendant American Medical Response Service, Inc. is a Delaware corporation doing
5 business in California with the capacity to sue and to be sued and doing business, in Los Angeles
6 County, State of California.

7 9. Defendant American Medical Response of Southern California is a California
8 corporation doing business in California with the capacity to sue and to be sued and doing business,
9 in Los Angeles County, State of California.

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

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

22 **JURISDICTION AND VENUE**

23 12. Venue is proper in this judicial district because Defendants conduct business in this
24 county, and each defendant has legal obligations to Plaintiff and many of the aggrieved employees
25 in this case that arose in this county.

26 13. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional limits
27 of the Superior Court and will be established according to proof at trial. Based on information,
28 investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for

1 monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars
2 (\$25,000).

3 14. The California Superior Court has jurisdiction in this matter because Plaintiff is a
4 resident of California, and Defendants are incorporated in and/or qualified to do business in
5 California and regularly conduct business in California. Further, there is no federal question at
6 issue as the claims herein are based solely on California law.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 15. During the relevant period, Defendants committed various violations of the California
9 Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state
10 law, which is intended to increase profits to the detriment of aggrieved employees.

11 16. Plaintiff is an aggrieved employee of Defendants, having worked for Defendants during
12 the statutory representative period, until mid- 2019.

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

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

19 19. Defendants, and each of them, have committed the following violations of the
20 California Labor Code:

21 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

22 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

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

25 21. Section 2(H) of Wage Order 9 defines "hours worked" as "the time during which an
26 employee is subject to the control of an employer, and including all the time the employee is
27 suffered or permitted to work, whether or not required to do so." Plaintiff and aggrieved employees
28 were not paid for all hours worked, including overtime hours worked because of Defendants'

policy of shaving timecard entries due to rounding timeclock entries to the nearest quarter-hour, and failing to reimburse employees for required personal cell phone use necessary to carry out required job functions.

22. Defendants have been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including penalty pay and overtime hours worked, as more fully set forth below:

23. Time Shaving and Rounding. Defendants round employee timecard entries to the nearest ¼ hour, although Defendants use KRONOS timeclocks that easily capture the exact minute employees present for work. Below is a screenshot of Plaintiff's time detail from February 1, 2019. Here, he worked a 12+ hour shift, clocking in 2 minutes early and clocking out 6 minutes late, yet was not paid for the 8 minutes as his time was rounded down.

2/1/2019 4:58:00 AM 5:06:00 PM 12:00 12609:40
LV
13310.520.0000/IRWINDALE 5257 N VINCENT AV/11/1242/24/006/107107

24. The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Defendants was neither fair nor neutral, as it consistently favored the employer, resulting in a failure to compensate Plaintiff and aggrieved employees for all hours and overtime hours worked.

25. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendants’ timecard rounding and time shaving practices, as well as Defendants’ practice of requiring employees to use their personal cell phones for work purposes, reducing their effective pay rate below minimum wage as further

discussed below. Based on Defendants' unlawful conduct described above, and because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants' failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001 §4. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

26. Failure to Pay Overtime Wages. Defendants have required, as a result of the practices alleged herein, Plaintiff and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Plaintiff and aggrieved employees have been required to work more than 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. As a result, Plaintiff and aggrieved employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Reimburse For Required Business Expenses
(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

28. Plaintiff and aggrieved employees were frequently required to use their personal cell phones for business purposes, such as for calling in to dispatch. Although employees were provided with unit phones (for some shifts), pagers, and radios, the unit phones and radios frequently didn't work – often failing to have service or be sufficiently charged when employees started their shifts. As professionals, aggrieved employees recognized how critical clear and consistent communication with the dispatch center is, so they had to use their personal cell phones frequently as the phones provided failed to work properly and reliably.

29. Defendant required Plaintiff and employees to utilize their personal cell phones for work purposes but failed to reimburse Plaintiff and employees for this use as required by the Labor Code. As a result of these practices, Defendants are liable for civil penalties under Cal. Lab. Code

1 §2698 *et seq.* Plaintiff also seeks attorneys’ fees and costs pursuant to Labor Code §§558 and
2 2699(g)(1).

3 **Failure to Timely Pay All Wages Owed**

4 (Cal. Labor Code §§201, 202, 203, 256, 558, and 2698 *et seq.*)

5 30. Defendants knowingly and willfully failed to pay all compensation due and owing to
6 Plaintiff and aggrieved employees at the time employment terminated. Defendants willfully failed
7 to pay employees who are no longer employed by it all compensation due upon termination of
8 employment as required by Cal. Lab. Code §§201 and 202.

9 31. Plaintiff believes that other employees who separated from the company, whether
10 voluntary or involuntary, were also denied payment of wages in a timely manner as required by
11 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
12 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
13 Development Agency (LWDA).

14 32. Pursuant to §§203, Plaintiff and similarly situated individuals are now also entitled to
15 recover up to thirty (30) days of wages due to Defendants’ “willful” failure to comply with the
16 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
17 violated §§201 – 203 and 256, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
18 § 2698 *et. seq.*

19 33. Defendants were required to pay Plaintiff and employee all wages earned twice during
20 each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all wages earned
21 to employees as a result of the unlawful employment policies and practices discussed herein. As a
22 result of these practices, aggrieved employees were underpaid for hours worked, including
23 overtime wages, and this underpayment resulted in a failure to pay all wages owed twice per
24 month.

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1 **Civil Penalties For Failure to Furnish and Maintain Accurate Payroll Records**

2 (Civil Penalties under Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

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

5 35. California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly or
6 at the time of each payment of wages, furnish each of his or her employees...an accurate itemized
7 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
8 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee
10 is paid, (7) the name of the employee and his or her social security number..., (8) the name and
11 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each hourly rate by the
13 employee.”

14 36. Labor Code § 1174 provides that “[e]very employer employing labor in this state shall
15 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages
16 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
17 which employees are employed, payroll records showing the hours worked daily by and the wages
18 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
19 employees employed at the respective plants or establishments. These records shall be kept in
20 accordance with rules established for this purpose by the commission, but in any case shall be kept
21 on file for not less than two years.”

22 37. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
23 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
24 and 1174. Wage statements failed to state the hourly rate for regular, OT, or DT hours, as
25 evidenced in the screenshot below. Further, and derivative of the claims alleged above, the
26 statements provided to Plaintiff and aggrieved employees have not accurately reflected actual
27 gross wages earned, including overtime, and total hour worked. Such failures caused injury to
28 Plaintiff and aggrieved employees, by, among other things, impeding them from knowing the total

American Medical Response of Southern California 6363 S. Fiddlers Green Circle #1400 Greenwood Village, CO 80111	Pedro Ceren [REDACTED]	CHECK NO.: 1346999260	TAX STATUS:	Single/
	EE ID [REDACTED]	ROUTE: IRW OPS CHECK DATE: 14-DEC-18 PERIOD START: 25-NOV-18 PERIOD END: 08-DEC-18	EXEMPTIONS:	Federal 0 California 0

Hours/Earnings/Expenses						Deductions/Taxes		
Description	-----Current-----			-----YTD-----		Description	--Current--	---YTD---
	Rate	Hours/Units	Earnings	Hours/Units	Earnings			
LOCATION:	IRWINDALE 5257 N Vincent Av							
Time Entry Wages	24.00		348.00	706.00	9,596.76	Federal Tax	99.00	1,845.23
Retro Flat	0.00		0.00	0.00	1,363.00	Social Security	59.54	1,224.48
Vac Cash Out	0.00		0.00	60.42	876.09	Medicare	13.93	286.37
Hol Hrly	0.00		0.00	16.50	229.88	CA State Tax	15.09	404.37
Standby DT	0.00		0.00	0.25	6.42	CA Disability	9.60	197.42
Mtg	0.00		0.00	4.00	58.00	DEN EE FI	19.43	330.31
No Break	0.00		0.00	8.00	109.91	MED EE FI	39.24	667.08
Standby	0.00		0.00	8.00	102.58			
Standby OT	0.00		0.00	4.00	76.94			
Train OT	0.00		0.00	4.00	78.69			
Training	0.00		0.00	8.00	104.92			
DT EMSC	0.50		14.50	46.25	1,320.29			
Admin Lv OT	8.00		174.00	8.00	174.00			
OT EMSC	11.50		250.13	313.50	6,409.65			
Admin Lv	16.00		232.00	16.00	232.00			
GTL	0.00		0.50	0.00	8.01			

	TOTAL GROSS	TAXABLE GROSS	TOTAL TAXES	TOTAL DED	EXP REIMB	NET PAY
Current	1,019.13	960.46	197.16	58.67	0.00	762.80
YTD	20,747.14	19,749.75	3,957.87	997.39	0.00	15,783.87
IMPORTANT MESSAGE:						

1 38. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of Section
2 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
3 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
4 each violation in a subsequent citation, for which the employer fails to provide the employee a
5 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
6 The civil penalties provided for in this section are in addition to any other penalty provided by
7 law.”

8 39. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

9 40. Plaintiff alleges on information and belief that Defendants knowingly and intentionally
10 failed to furnish aggrieved employees with accurate itemized statements for each pay period that
11 they worked and failed to maintain accurate payroll records of the aggrieved employees as
12 mandated by Labor Code §§ 226.

13 41. Defendants failed to timely furnish final wages upon separation as required under
14 Labor Code §201-202, resulting in waiting time penalties when final wages were ultimately paid.
15 As a result, Defendants issued inaccurate final wage statements to aggrieved employees.

16 42. Through this representative action, Plaintiff will advance the interests of hundreds of
17 current and former employees, such that joinder is impracticable. These current and former
18 employees can be readily be identified through a review of Defendants’ payroll records and the
19 records of the company that handles payroll for Defendants.

20 43. Plaintiff seeks to recover the PAGA civil penalties through a representative action
21 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
22 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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1 **FIRST CAUSE OF ACTION**

2 **Against All Defendants for Violation of the Private Attorneys General Act ("PAGA")**

3 **(California Labor Code §2698 *et seq.*)**

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

6 45. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants
7 during the applicable statutory period and suffered one or more of the Labor Code violations set
8 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
9 former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable
10 attorneys' fees and costs.

11 46. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 47. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)
- 18 b. Failure to Reimburse For Required Business Expenses (Cal. Labor Code §§1198,
19 2802, 2699 *et seq.*)
- 20 c. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a),
21 256, 2698 *et seq.*);
- 22 d. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
23 Records (Cal. Labor Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

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

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

50. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

51. At the time of each violation, Defendants employed one or more employees.

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

53. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency (“LWDA”) and served by certified mail upon Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code provisions that Defendants have violated. The LWDA did not respond to Plaintiff’s Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

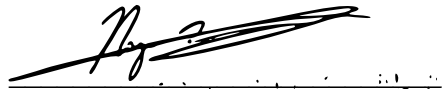
WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendants as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;

- 1 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
2 law;
3 4. Pre-judgement and post-judgement interest as provided by law; and
4 5. Such other and further relief that the Court may deem just and proper.
5

6 DATED: April 27, 2020

**KOUL LAW FIRM
LAW OFFICES OF SAHAG MAJARIAN II**

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11 BY: Nazo Koulloukian, Esq.
12 Attorneys for Plaintiff PEDRO CEREN, and all
13 aggrieved employees
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EXHIBIT A



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

February 20, 2020

Via E-filing:

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

Via Certified U.S. Mail:

American Medical Response Ambulance Service, Inc.
6363S. Fiddlers Green Circle #1400
Greenwood Village, CO 80111

American Medical Response of Southern California
6363S. Fiddlers Green Circle #1400
Greenwood Village, CO 80111

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
Claimant: Pedro Ceren
Employer: American Medical Response Service, Inc.; American Medical
Response of Southern California

Dear Sir or Madam:

Pedro Ceren (“Claimant”) has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian of Law Offices of Sahag Majarian II, to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, American Medical Response Service, Inc. and American Medical Response of Southern California (hereafter collectively referred to as “Employer” or “AMR.”)

AMR is a medical transportation company operating throughout the United States that provides and manages community-based medical transportation services, including emergency (911), non-emergency and managed transportation, fixed-wing air ambulance, and disaster response. Claimant worked for AMR as an Emergency Medical Technician (EMT) from 2014 to 2017, and again from 2018 - 2019. Claimant is an aggrieved employee and his proposed PAGA representative action would represent numerous current and former aggrieved employees.

Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. 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 Cal. Lab. Code §2699.3.

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

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(H) or Wage Order 9 "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so."

Claimant and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Employer's policy of shaving timecard entries due to rounding timeclock entries to the nearest quarter-hour, failing to reimburse employees for required personal cell phone use, and failing to reimburse employees for radios purchased by employees that were necessary to carry out required job functions.

Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Time Shaving and Rounding

AMR rounds employee timecard entries to the nearest ¼ hour, although AMR uses KRONOS timeclocks that easily capture the exact minute employees present for work. Below is a screenshot of Claimant's time detail from February 1, 2019. Here, he worked a 12+ hour shift, clocking in 2 minutes early and clocking out 6 minutes late, yet was not paid for the 8 minutes as his time was rounded down.

2/1/2019 4:58:00 AM 5:06:00 PM 12:00 12609:40
LV
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The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from claimant and aggrieved employees' hours worked and favored the employer, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's timecard rounding and time shaving practices, as well as Employer's practice of requiring employees to use their personal cell phones for work purposes and purchasing their own radios for use on the job, reducing their effective pay rate below minimum wage as further discussed below. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *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 frequently required to use their personal cell phones for business purposes, such as for calling in to dispatch. Although employees were provided with unit phones (for some shifts), pagers, and radios, the unit phones and radios frequently didn't work – often failing to have service or be sufficiently charged when employees started their shifts. Claimant also explains that the radios that AMR provided were so outdated that they didn't work properly and made it difficult for EMT's to effectively communicate with the command center. As professionals, aggrieved employees recognized how critical clear and consistent communication with the command center is, so they had to purchase their own radios (approx. \$60/each on Amazon) and they would program the radios for use on the job.

Employer required Claimant and employees to utilize their personal cell phones for work purposes and made it necessary for employees to purchase their own radios as a result of providing inadequate, outdated equipment. AMR failed to reimburse Claimant and employees for this use as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 204(a) and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer

violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203.

Claimant will seek restitution pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

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 because of employer's wrongful conduct set forth herein. As a result of these practices, Employees were underpaid for hours worked, and this underpayment resulted in a failure to pay all wages owed twice per month resulting in liability under Labor Code §210 for violation of §204.

Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records

(Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *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, 226.3, 1174, and 1174.5. Wage statements failed to state the hourly rate for regular, OT, or DT hours, as evidenced in the screenshot below.

Further, and derivative of the claims alleged above, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime, phone reimbursement, radio reimbursement, and total hour worked. Such failures caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

IMPORTANT MESSAGE:

Failure to Comply with California Sick Pay Requirements

(Cal. Lab. Code §§ 246, 247.5, 248.5 and 2698 *et seq.*)

Claimant, on behalf of himself and aggrieved employees, alleges that Employer failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick dates were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. This information was not listed on paystubs, as evidenced above, and no other documentation or disclosure concerning California Sick Pay accompanied the employees' pay. Claimant now seeks damages pursuant to §§248.5 and 2698 *et seq.*

Conclusion

Employer has violated several 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 him if it does not intend to investigate these violations so that o he may pursue her claims as a representative action in civil court.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nazo Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant