



Michael A. Swift, Esq.
562.590.5550 phone
562.590.8400 facsimile
mswift@mahoney-law.net

April 3, 2020

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/207>

VIA CERTIFIED MAIL # 7019 0700 0001 7488 6332

Return Receipt Requested

DECO Logistics, Inc.

12755 E. 9 Mile Rd.

Warren, MI 48089

Re: Oscar I. Lopez Villareal v. DECO Logistics, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTIONS 2698 *ET SEQ.***

To: California Labor and Workforce Development Agency and DECO Logistics, Inc.

From: Oscar I. Lopez Villareal on behalf of himself and aggrieved employees who were subject to DECO Logistics, Inc.'s unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Oscar I. Lopez Villareal ("Mr. Lopez Villareal") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seek civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.* ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1) and 2699.3, subdivision (c)(1) and may lead to an action against DECO Logistics, Inc. ("DECO") in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against DECO, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or

entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

DECO is a California corporation that delivers containers to customers and businesses in California. Mr. Lopez Villareal and other aggrieved employees worked or currently work for DECO as truck drivers and were or are misclassified as independent contractors. DECO employed Mr. Lopez Villareal within the past year. As a delivery driver, Mr. Lopez Villareal and other aggrieved employees' job duties were to, *inter alia*, deliver containers to businesses and ports in California, complete manifests, tickets, and logbooks (handwritten and electronic), and update their vehicle maintenance records. Mr. Lopez Villareal alleges that DECO violated various sections of the Labor Code, including sections 201-204, 206, 210, 226, 226.2, 226.3, 226.7, 226.8, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, by failing to provide Mr. Lopez Villareal and all other aggrieved employees with all minimum wages, meal and rest periods or compensation in lieu thereof, accurate wage statements, all compensation due upon separation of employment, reimbursements for business expenses, and failing to maintain accurate records of hours worked, among other things. Mr. Lopez Villareal and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for DECO as truck drivers that were misclassified as independent contractors during the Liability Period (defined as one year prior to the submission of this letter to the Labor and Workforce Development Agency and certified mailing to DECO until resolution of these claims).

DECO willfully misclassified Mr. Lopez Villareal and other aggrieved employees as independent contractors in violation of Labor Code section 226.8 in order to avoid compliance with the various sections of the Labor Code outlined in this correspondence. Mr. Lopez Villareal and other aggrieved employees should have been classified as non-exempt employees since (A) they were not free from the control and direction of DECO in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) they did not perform work that is outside the usual course of DECO'S business, and (C) they were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. For example:

- DECO directly and indirectly exercised control over the wages, hours, and working conditions of Mr. Lopez Villareal and the aggrieved employees since they were required to place DECO'S decals and/or logos on their personal vehicles, required to answer calls, texts, and e-mails throughout the day from DECO regarding deliveries, required to use phone applications to complete deliveries and provide status updates, were disciplined by DECO if they did not properly complete deliveries, were required to make deliveries pursuant to DECO'S instructions, procedures, and schedules, were required to remain available throughout the day (especially Saturdays), were provided work orders and locations, were required to complete manifests and tickets pursuant to DECO'S instructions and procedures, and were otherwise controlled by DECO and/or subject to its direct or indirect control;
- DECO retained the right to terminate Mr. Lopez Villareal's and the aggrieved

- employees' working relationship at its discretion;
- Mr. Lopez Villareal and the aggrieved employees were required to undergo background screenings and maintain all licenses and other requirements before they could perform delivery driver duties;
- Mr. Lopez Villareal and aggrieved employees were engaged in providing delivery services, an integral and entirely essential aspect of DECO'S regular business;
- Mr. Lopez Villareal and aggrieved employees commonly worked for DECO for lengthy periods of time;
- Mr. Lopez Villareal and the aggrieved employees were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by DECO; and
- The customers are and/or were DECO'S customers, and not those of Mr. Lopez Villareal and the aggrieved employees.

Business by business, all manner and means to route, deliver, and perform were directed by DECO and monetized without any consideration for a common scheme to avoid taxes, payment of employer's share of taxes, and to otherwise shortchange the revenues due to California and/or the federal government, and place that burden on the misclassified independent contractors.

During the Liability Period, DECO failed to pay Mr. Lopez Villareal and other aggrieved employees minimum wages for all hours worked at the legally mandated rates. Specifically, DECO failed to pay minimum wages to Mr. Lopez Villareal and the aggrieved employees for non-productive time such as completing their manifests, logbooks, and tickets, and time spent during rest breaks if they were able to take a rest break. As such, DECO failed to pay Mr. Lopez Villareal and other aggrieved employees minimum wages for all hours worked, in violation of Labor Code sections 226.2, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

During the Liability Period, DECO failed to provide 30-minute meal periods within the appropriate time intervals to Mr. Lopez Villareal and other aggrieved employees even though they regularly worked in excess of five (5), ten (10), or twelve (12) hours per workday. Specifically, because DECO unlawfully treated Mr. Lopez Villareal and other aggrieved employees as independent contractors rather than non-exempt employees, Plaintiff and each of the proposed Class Members during the Class Period were systematically not provided with meal periods or the one-hour premium pay owed in lieu of providing such meal periods. Indeed, Mr. Lopez Villareal and other aggrieved employees regularly missed their meal periods, had them late, interrupted, and/or drove while they ate without additional compensation. Accordingly, DECO failed to provide Mr. Lopez Villareal and other aggrieved employees with meal periods or compensation in lieu thereof in violation of Labor Code sections 226.7 and 512, and the applicable Industrial Welfare Commission ("IWC") Wage Orders.

During the Liability Period, DECO failed to authorize or permit ten-minute (10) rest periods for every four (4) hours or major fraction thereof worked because Mr. Lopez Villareal and other aggrieved employees were not authorized or permitted to take their rest periods at the appropriate time intervals. Similar to meal periods, because DECO unlawfully treated Mr. Lopez Villareal and other aggrieved employees as independent contractors rather than piece rate

employees, DECO lacked a compliant rest period policy. Indeed, Mr. Lopez Villareal and other aggrieved employees regularly missed their rest periods without being provided an additional hour of pay at the regular rate of pay. As such, DECO violated Labor Code section 226.7 and the applicable IWC Wage Orders.

During the Liability Period, DECO failed to reimburse Mr. Lopez Villareal and other employees for all business expenses incurred for DECO'S benefit, including requiring them to use their personal vehicles and cell phones to carry out their duties. Mr. Lopez Villareal and other aggrieved employees incurred expenses in relation to the use, mileage, maintenance, and wear and tear of their personal vehicles to carry out their duties for DECO, including, but not limited to, insurance expenses and car repairs or services without reimbursement. DECO also required Mr. Lopez Villareal and the aggrieved employees to be responsible for purchasing and supplying all other necessary items such as a smartphone and related monthly data plan to communicate with DECO via phone, text, and e-mail, navigate to worksites using the GPS phone application, and download and use phone applications such as JJ Keller to log their time and receive assignments from dispatch without reimbursement. Accordingly, DECO violated Labor Code section 2800 and 2802.

As a result of, and in addition to, the aforementioned Labor Code violations, DECO failed to provide accurate itemized wage statements that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate, all deductions, and the name and address of the legal entity that is the employer. As a result, DECO violated Labor Code sections 226 and 226.3.

Similarly, DECO failed to maintain accurate and complete records showing the hours worked daily by and the wages paid to Mr. Lopez Villareal and the aggrieved employees as a result of the same underpayment of wages referenced above. Consequently, DECO violated Labor Code sections 1174 and 1174.5.

As a result of, and in addition to, the above referenced Labor Code violations, DECO failed to timely pay all wages owed throughout Mr. Lopez Villareal and the aggrieved employees' employment and following the end of their employment. Accordingly, DECO violated Labor Code sections 201-204, 206, and 210.

LABOR AND WORKFORCE DEVELOPMENT AGENCY

April 3, 2020

Page 5 of 5

Mr. Lopez Villareal will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by DECO. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. A. Swift', with a stylized flourish at the end.

Michael A. Swift, Esq.

MAHONEY LAW GROUP, APC