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9 Attorneys for Plaintiff,
10 RAUL MORALES on behalf of
himself, all aggrieved employees, and the State
11 of California as a Private Attorneys General

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**
14

15 RAUL MORALES, an individual, on behalf of)
16 himself, all aggrieved employees, and the State)
of California as a Private Attorneys General,

17 Plaintiffs,

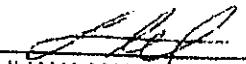
18 vs.

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20 LKQ CORPORATION, an Illinois corporation,
21 AMERICAN RECYCLING
22 INTERNATIONAL, INC., a California
corporation, and DOES 1-50, inclusive,

23 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 03 2020

BY 
LILIANA MARISCAL, DEPUTY

Case No.:

CIV DS 2019436

**REPRESENTATIVE ACTION
COMPLAINT**

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

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

4 **NATURE OF THE ACTION**

5
6 1. Plaintiff RAUL MORALES worked at an auto parts yard for defendants LKQ
7 CORPORATION and AMERICAN RECYCLING INTERNATIONAL, INC., and DOES 1-50
8 (collectively "Defendants"). Plaintiff brings this action pursuant to the Private Attorneys General
9 Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
10 former hourly, nonexempt employees of Defendants in California within one year of serving
11 notice on the LWDA to the present are aggrieved employees.

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

21 3. Defendants have had a consistent policy and/or practice of: (1) failing to provide timely,
22 uninterrupted 30-minute meal breaks; (2) failing to provide rest breaks; (3) failing to pay for all
23 hours worked, including overtime hours worked; (4) failing to timely pay all wages owed; and
24 (5) failing to provide accurate itemized wage statements. Defendants are therefore liable for civil
25 penalties under the Cal. Labor Code, including the Private Attorney General Act ("PAGA"),
26 Labor Code §2698 *et seq.*, as described more fully herein.

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

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 14. During the relevant time-period, Defendants committed various violations of the
7 California Labor Code as alleged below in more detail. Defendants enforced multiple policies
8 that violate state law, which are intended to increase profits to the detriment of aggrieved
9 employees.

10 15. Defendants LKQ CORPORATION and AMERICAN RECYCLING
11 INTERNATIONAL, INC., provide alternative and specialty parts to repair and accessorize
12 automobiles and other vehicles. This representative action represents dozens of current and
13 former aggrieved employees.

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

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

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

22 **Failure to Provide Timely, Uninterrupted 30-Minute Meal Breaks**

23 (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*)

24 19. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and
25 incorporate said paragraphs herein by reference.

26 20. During Plaintiff's employment, Defendants failed to maintain a complaint meal
27 period policy and practice. Defendants failed to provide all of its hourly employees with their
28 right to take an off-duty, unpaid 30-minute meal period. Labor Code §512 provides, "[a]n

1 employer may not employ an employee for a work period of more than five hours per day
2 without providing the employee with a meal period of not less than 30 minutes . . .” Labor Code
3 §226.7(a) provides, “[n]o employer shall require an employee to work during any meal . . .
4 period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A)
5 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty
6 during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period
7 and counted as time worked.”

8 21. Plaintiff worked outdoors at one of Defendants’ auto parts yards and was required to
9 walk a long distance from his workstation to the timeclock where he would clock out for lunch.
10 Because the timeclock was situated a long distance from the indoor breakroom where employees
11 kept their lunches, he spent much of his unpaid, off-the-clock time traveling to and from the
12 break room. He had to leave the break room early to make sure he had time to walk back to the
13 timeclock and clock back in. There was frequently a line, and employees were required to spend
14 unpaid meal period time to clock in. Plaintiff spent approximately five (5) minutes of his 30-
15 minute meal period walking to and from the break room to the timeclock.

16 22. In addition, meal periods were often late and under thirty minutes. For example, on
17 11/11/19, 11/18/19, 12/6/19, and 12/13/19 Plaintiff had short and late meal periods. Pursuant to
18 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 273 P.3d 513, a first meal period
19 must begin no later than the start of an employee’s sixth hour of work.

20 23. Defendants failed to permit Plaintiff and others to take timely, off-duty meal breaks
21 of “not less than 30 minutes” for reach five consecutive hours of work in violation of Labor
22 Code §§226.7 and 512. As a derivative claim, Plaintiffs allege that pay statements were
23 inaccurate, failing to include required meal period penalties, thus failing the requirements of
24 Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties
25 pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

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

26. Plaintiff worked outdoors and had to walk a long distance to the breakroom to take his break indoors, in a climate-controlled area. However, because it took so much time to walk to and from the break room, he spent much of his required 10-minute rest periods in transit. In addition, breaks were frequently interrupted and under 10 minutes.

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

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

29. Wage Order 4 defines “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.” When employees like Plaintiff and their coworkers earning wages at or near minimum wage do not receive payment for all hours worked,

1 including time shaved from their timecards due to employer rounding, uncompensated off-the-
2 clock security bag check, and time spent under Defendants' control during unpaid meal periods,
3 the result is that they are earning less than the statutory minimum wages for all hours worked.
4 Defendants have been engaged in many unlawful employment practices which resulted in
5 underpayment for hours worked each pay period, including overtime hours worked, as much
6 fully set forth below:

7 30. Pre and Post Shift Work. Plaintiff and aggrieved employees frequently worked off the
8 clock and were routinely subjected to periods wherein they were under the Defendants' control
9 but not compensated for their time. In addition to requiring employees to spend a meaningful
10 amount of their unpaid meal period walking from the timeclock to the break room and vice
11 versa, employees were also required to submit to off-the-clock security bag checks. After
12 Plaintiff was off-the-clock for the day, he was then required to show his bag to security so they
13 could confirm that their minimum wage earning employees were not stealing. This bag check
14 should have been done on-the-clock. Defendants have violated Labor Code §§510, 1194, and
15 1198 and Wage Order 4. Defendants are liable for civil penalties pursuant to Labor Code §2698
16 *et seq.*

17 31. Work Performed During Unpaid Meal Periods. As more fully set forth above,
18 Defendants failed to permit Plaintiff and others to take timely, off-duty meal breaks of "not less
19 than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7
20 and 512. Plaintiff and aggrieved employees were required to spend time walking to and from the
21 time clock and break room and were required to line up early to make sure they clocked back in
22 on-time. All this time spent under Defendants' control was uncompensated and unlawful.
23 Plaintiff and aggrieved employees have been employed under conditions prohibited by the wage
24 order, and thus Defendants have violated §1198. Defendants are liable for civil penalties
25 pursuant to Labor Code §2698 *et seq.*

26 32. Time Shaving and Rounding. Although Defendants use a high-tech timekeeping
27 system that could easily capture the exact minute employees present for work, Defendants round
28 employee timecard entries to the nearest 0.10 of an hour, resulting in employees not being paid

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

11 33. Failure to Pay Wages – Required Minimum Wage. Defendants failed to pay Plaintiff
12 and aggrieved employees for all hours worked as a result of Defendants’ practice of requiring
13 extensive walking time to and from the break room, rounding timecard entries, and requiring off
14 the clock security bag checks. Based on Defendants’ unlawful conduct described above, and
15 because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendants’
16 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
17 minimum wage for all hours worked, in violation of Labor Code §§1197, 1197.1, 1199 and
18 Wage Order 4-2001 4(B). Defendants are liable for civil penalties pursuant to Labor Code §2699
19 *et seq.*

20 34. Failure to Pay Overtime Wages. Defendants have required Plaintiff and others to
21 work in excess of eight (8) hours in a day and 40 in a week but has not paid these employees
22 overtime compensation at one and one-half times the regular rate of pay in violation of Labor
23 Code §510. Further, Plaintiff and employees have been required to work in excess of 12 hours in
24 one day without being compensated at a rate of twice the regular rate of pay. §510. Because
25 Defendants shave time from employee timecards due to rounding, requiring off-the-clock travel
26 to break rooms, and off-the-clock security back checks, Plaintiff and aggrieved employees have
27 been denied overtime pay. Plaintiff and others have been denied “the unpaid balance of the full
28

1 amount of this . . . overtime compensation” as required by Cal. Labor Code §1194. Defendants
2 are liable for civil penalties pursuant to Labor Code §2699 *et seq.*

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

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

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

7 36. Failure to Pay Wages Due Upon Termination. Labor Code section 201 states, in
8 pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time
9 of discharge are due and payable immediately.” Labor Code section 202 states, in pertinent part,
10 “If an employee not having a written contract for a definite period quits his or her employment
11 his or her wages shall become due and payable not later than 72 hours thereafter, unless the
12 employee has given 72 hours previous notice of his or her intention to quit, in which case the
13 employee is entitled to his or her wages at the time of quitting.” Labor Code section 203 provides
14 that an employee’s wages shall continue as a penalty from when they first become due at the
15 same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned
16 and unpaid wages in accordance with Labor Code section 201 or 202.

17 37. Defendants willfully failed to pay Plaintiff and aggrieved employees all wages due
18 and owing upon separation of employment including, but not limited to, all earned regular and
19 overtime wages. By furnishing Plaintiff and other separate aggrieved employees with a final
20 check that failed to include all earned and owed wages, Defendants violated Labor Code §§201
21 and/or 202.

22 38. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
23 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
24 to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
25 unlawful employment policies and practices discussed herein. As a result of these practices,
26 employees were underpaid for hours worked, including overtime and penalty wages, and this
27 underpayment resulted in a failure to pay all wages owed twice per month. Defendants are liable
28 for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

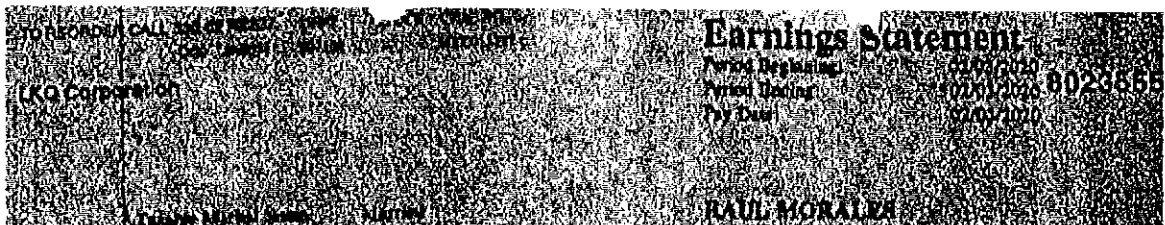
(Cal. Labor Code §§226, 226.3, 1174, 2699 *et seq.*)

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

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

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

42. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees and maintain accurate records, in accordance with Labor Code §§226(a) and 1174. As depicted in the sample wage statement



1 below, statements have not accurately reflected actual gross wages earned, including overtime
2 and meal/rest premiums, and total hours. Moreover, Plaintiff's final wage statement was issued
3 to him by LKQ Corporation and failed to list the address of the legal entity that was the
4 employer.

5 43. Other checks issued to Plaintiff during the representative period stated the employer
6 was "American Recycling Internl Inc." Here, Defendants shortened the word "International" and

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8 CO. FILE DEPT. CLOCK VCHR. NO.
QG0 868074 007100 0000010171

9 American Recycling Internl Inc
10 5846 Crossings Blvd
11 Antioch, TN 37013

12 thus failed to state the full legal entity which is the employer. Moreover, there is ambiguity over
13 who is the legal employer given that all employee applications, handbooks, HR, and payroll
14 communications are with LKQ Corporation, but "American Recycling Internl, Inc." is listed on
15 wage statements.

16 44. Such failures caused injury to Plaintiff and others, by, among other things, impeding
17 them from knowing the total hours worked and the amount of wages, overtime, and penalty
18 wages to which they are and were entitled. Defendants knowingly and intentionally failed to
19 itemize the gross wages earned, net wages earned, and total hours worked. Defendants are liable
20 for civil penalties pursuant to Labor Code §§226.3 and 2699 *et seq.*

21 45. Through this representative action, Plaintiff will advance the interests of hundreds of
22 current and former employees, such that joinder is impracticable. These current and former
23 employees can be readily identified through a review of Defendants' payroll records and the
24 records of the company that handles payroll for Defendants.

25 46. Plaintiff seeks to recover the PAGA civil penalties through a representative action
26 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
27 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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Against All Defendants for Violation of the Private Attorneys General Act (“PAGA”)
(California Labor Code §2698 *et seq.*)

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

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

- a. Failure to Provide Timely, Uninterrupted 30-Minute Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*);
- b. Failure to Provide Rest Breaks (Cal. Lab. Code §§226, 226.7, 512, 2698 *et seq.*);
- c. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal. Lab. Code §§218, 510, 1194, 1197, 1198, 2699 *et seq.*);
- d. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 2698 *et seq.*); and
- e. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code §§226, 226.3, 1174, 2699 *et seq.*).

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

1 52. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
2 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
3 violations for each underpaid employee for each pay period for which the employee was
4 underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid
5 employee for each pay period for which the employee was underpaid.

6 53. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
7 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
8 period, per aggrieved employee for subsequent violations for all Labor Code provisions for
9 which a civil penalty is not specifically provided.

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

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

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

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

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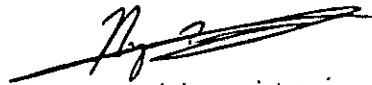
1 **PRAYER FOR RELIEF**

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

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
5 determined at trial, but at least the jurisdictional amount of this Court;
6 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
7 §2699(g) and/or other applicable law;
8 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
9 law;
10 4. Pre-judgement and post-judgement interest as provided by law; and
11 5. Such other and further relief that the Court may deem just and proper.

12 DATED: September 2, 2020

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

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17 BY: Nazo Koulloukian, Esq.
18 Attorneys for Plaintiff RAUL MORALES, and all
19 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

June 29, 2020

Via E-filing:

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

Via Certified U.S. Mail:

LKQ Corporation
c/o Lonnie D. Giamela, Esq.
Ashley N. Attia, Esq.
Fisher & Philips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

American Recycling International, Inc.
c/o Lonnie D. Giamela, Esq.
Ashley N. Attia, Esq.
Fisher & Philips LLP
444 South Flower Street, Suite 1500
Los Angeles, CA 90071

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Raul Morales
Employer: LKQ Corporation, American Recycling International, Inc.

Dear Sir or Madam:

Raul Morales has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent them, and all other aggrieved employees, for wage and hour claims against their former employers, LKQ Corporation and American Recycling International, Inc. (collectively hereafter “Employer.”)

Employer requires employees to work under conditions that violate California wage and hour laws, including underpaying low-wage earners and depriving them of required, legally compliant meal and rest breaks. This PAGA representative

action would represent hundreds of current and former employees. Claimant worked for Employer until February of 2020.

Pursuant to correspondence dated June 25, 2020, from Fisher & Philips LLP wherein the undersigned was advised that Employers have retained Fisher & Philips and requested that we send all correspondence regarding this matter to counsel for Employers, this letter will hereby serve as notice to the above mentioned Employers pursuant to Cal. Lab. Code §2699.3.

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 Provide Timely, Uninterrupted 30- Minute Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 et seq.

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty meal periods. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

Claimant worked outdoors at one of Employer's auto parts yards and was required to walk a long distance from his workstation to the timeclock where he would clock out for lunch. Because the timeclock was situated a long distance from the indoor breakroom where employees kept their lunches, he spent much of his unpaid, off the clock time traveling to and from the breakroom. He had to leave the breakroom early to make sure he had time to walk back to the timeclock and clock back in. There was frequently a line, and employees were required to spend unpaid

meal period time waiting to clock in. Claimant spent approximately 5 minutes of his 30-minute meal period walking to and from the break room to the timeclock.

Meal periods were also often late and under thirty minutes. For example, on 11/11/19, 11/18/19, 12/6/19, 12/13/19 Claimant had short and late meal periods. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work.

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, claimants allege that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer is required to authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 12(A).

Claimant worked outdoors and had to walk a long distance to the breakroom to take his break indoors, in a climate-controlled area. However, because it took so much time to walk to and from the breakroom, he spent much of his required 10-minute rest periods in transit. In addition, breaks were frequently interrupted and under 10 minutes.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant also alleges that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

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

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

Wage Order 4 defines “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.” When employees like Claimant and their coworkers earning wages at or near minimum wage do not receive payment for all hours worked, including time shaved from their timecards due to employer rounding, uncompensated off-the clock security bag checks, and time spent under Employer’s control during unpaid meal periods, the result is that they are earning less than the statutory minimum wages for all hours worked. 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:

Pre- and Post-Shift Work

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. In addition to requiring employees to spend a meaningful amount of their unpaid meal period walking from the timeclock to the break room and vice versa, employees were also required to submit to off-the-clock security bag check. After Claimant was off the clock for the day, he was then required to show his bag to security so they could confirm that their minimum wage earning employees were not stealing. This bag check should have been done on the clock.

Employer has violated Labor Code §§510 1194, and 1198, and Wage Order 4. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees were required to spend time walking to and from the time clock and break room, and were required to line up early to make sure they clocked back in on-time. All this time spent under Employer’s control was

uncompensated and unlawful. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Time Shaving and Rounding

Employer rounds employee timecard entries to the nearest .10 of an hour, although Employer uses a high-tech timekeeping system that could easily capture the exact minute employees present for work, employees were not paid for this rounded time.

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, 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 Claimants and aggrieved employees for all hours worked as a result of Employer’s practice of requiring extensive walking time to and from the breakroom, rounding timecard entries, and requiring off the clock security bag checks. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s 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 4-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Pay Overtime Wages

Employer has required Claimant 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, Claimants and employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. Because Employer shaves time from employee timecards due to rounding, requiring off the clock travel to break rooms, and off the clock security bag checks, Claimant and aggrieved employees have been denied overtime pay. Claimant and others have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201-203, and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were

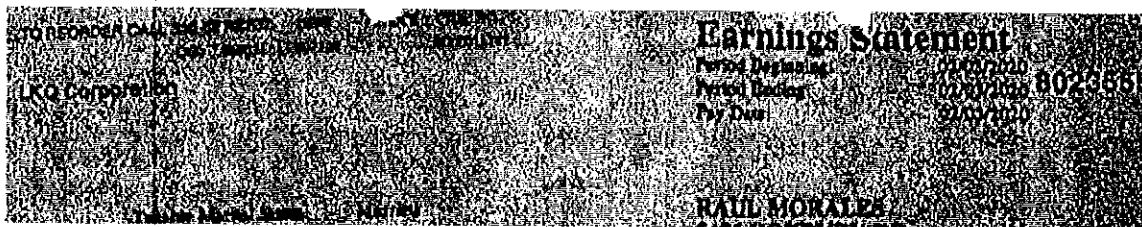
underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. As depicted in the sample wage statement, below, statements have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, and total hours.

Moreover, Claimant's final wage statement was issued to him by LKQ Corporation and failed to list the address of the legal entity that was the employer.



Other checks issued to Claimant during the representative period stated the employer was "American Recycling Internl Inc." Here, Employer shortened the word "international" and thus failed to state the full legal entity which is the employer. Moreover, there is ambiguity over who is the legal employer, given that all employee applications, handbooks, HR and payroll communications are with LKQ Corporation, but "American Recycling Internl, Inc." is listed on wage statements.

CO.	FILE	DEPT.	CLOCK	VCHR. NO.
QG0	868074	007100		.0000010171

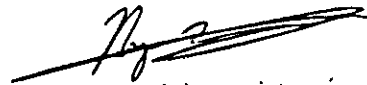
American Recycling Internl Inc
5846 Crossings Blvd
Antioch, TN 37013

Such failures caused injury to Claimant and others, by, among other things impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of 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 them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court.

Sincerely,



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