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Attorneys for Plaintiff,
JORGE RESENDIZ 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

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

Plaintiffs,

vs.

MOLDEX-METRIC, INC., a California
corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV48477**

REPRESENTATIVE ACTION

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

Plaintiff JORGE RESENDIZ brings this PAGA representative action complaint on behalf
of himself, all aggrieved employees, and the State of California as a Private Attorneys General,
and alleges as follows:

NATURE OF THE ACTION

1
2 1. Plaintiff JORGE RESENDIZ worked as a maintenance and electrical employee for
3 defendant MOLDEX-METRIC, INC. and Does 1-50 (collectively “Defendants”). Defendants
4 operations are based upon manufacturing reusable respirators and hearing protection. Plaintiff
5 brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor
6 Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendant
7 within one year of serving notice on the LWDA to the present are aggrieved employees.

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

17 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours
18 worked, including overtime hours worked; (2) failure to provide timely, uninterrupted meal breaks;
19 (3) failing to provide safe working conditions; (4) failing to provide compliant rest breaks and
20 cool-down rest periods; (5) failing to timely pay all wages owed; (6) failing to pay accrued vacation
21 upon separation; and (7) failing to provide accurate wage statements and maintain accurate payroll
22 records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including
23 the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully
24 herein.

THE PARTIES

25
26 7. Plaintiff JORGE RESENDIZ is a resident of the State of California and was employed
27 as an hourly, nonexempt employee of Defendants until February 2020.
28

8. Defendant MOLDEX-METRIC, INC. is a corporation incorporated in California and doing business in California with the capacity to sue and to be sued, and doing business, in the county of Los Angeles, State of California.

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

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

JURISDICTION AND VENUE

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

12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

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

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

5 15. Defendant MOLDEX-METRIC, INC., is a US-based privately held manufacturing
6 company with focus on reusable respirators and hearing protection. Plaintiff worked in
7 maintenance and electrical job functions in the manufacturing facility located in Culver City,
8 California. This representative action represents over fifty current and former aggrieved
9 employees.

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

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

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

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

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

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

22 20. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an
23 employee is subject to the control of an employer, and including all the time the employee is
24 suffered or permitted to work, whether or not required to do so.” When employees like Claimant
25 and his coworkers have time shaved from their timecards due to auto-deducting meal break
26 practices while being required to comply with a bell system that only provides for a 25 minute
27 meal break, the result is underpayment for hours worked each pay period, including overtime hours
28 worked. Defendants have been engaged in many unlawful employment practices which resulted

1 in underpayment for hours worked each pay period, including overtime hours worked, as more
2 fully set forth below:

3 21. Auto-deducted Meal Periods. Defendants auto-deduct meal break from employees'
4 timecards. Employees are required to comply with a bell system providing only 25-minute meal
5 breaks.

6 22. Failure to Pay Overtime. Labor Code §510 clearly requires companies to pay overtime
7 for any hours worked in excess of eight (8) hours in one workday and 40 hours in any one work
8 week. Any work in excess of 12 hours must be paid at twice the regular rate of pay. As a result of
9 Defendant's practices, Plaintiff and aggrieved employees were underpaid for hours worked each
10 pay period, including overtime worked. Plaintiff and others have been denied "the unpaid balance
11 of the full amount of this . . . overtime compensation" as required by Cal. Labor Code §1194.
12 Defendants are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

13 23. Work Performed During Unpaid Meal Periods. As more fully set forth below,
14 Defendants failed to permit Plaintiff and others to take timely, off-duty, first and second meal
15 breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor
16 Code §§226.7 and 512. Plaintiff was either denied required breaks, forced to work through breaks,
17 or clocked out automatically although he continued working. Plaintiff was also employed under
18 conditions prohibited by the wage order, and thus Defendant violated §1198. As a result of these
19 violations, Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

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

1 **Failure to Provide Timely & Uninterrupted Meal Breaks**

2 (Civil Penalties under Labor Code §§226.7, 512, 1198, 2698 *et seq.*)

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

5 26. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
6 during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”
7 Wage Order 9 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30
8 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as
9 time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee for
10 longer hours than those fixed by the wage order or under conditions of labor prohibited by the
11 order.

12 27. Defendant had a practice where all aggrieved employees were on this same break
13 schedule which would be announced by a bell system. The meal policy and practice involved
14 sounding a 5-minute warning bell at which time employees start walking to the break area,
15 approximately three minutes from the work area. Then, 25-minutes later, a second bell rings at
16 which point Plaintiff and aggrieved employees are required to start walking back to their work
17 stations.

18 28. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-duty,
19 meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of
20 Labor Code §§226.7 and 512. Although meals were routinely late and always noncompliant,
21 Defendants never paid penalty pay to Plaintiff and others. As a derivative claim, Plaintiff alleges
22 that his pay statements were inaccurate, failing to include required meal period penalties, thus
23 failing the requirements of Labor Code §226(a). As a result of these violations, Defendants are
24 liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

25 29. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
26 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the premium
27 pay of one (1) hour of pay at the employee’s regular rate of compensation for each workday that
28 the meal period is not provided, Plaintiff will seek statutory penalties under Labor Code §226(a)(1)

1 because the failure to pay such premium wages rendered gross pay calculations inaccurate in
2 violation of Labor Code §226(e)(2)(B)(i).

3 **Failure to Provide Safe Working Conditions**

4 (Cal. Labor Code §1198, Wage Order 9 ¶15.)

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

7 31. Wage Order 9 ¶15 requires that (A) The temperature maintained in each work area shall
8 provide reasonable comfort consistent with industry-wide standards for the nature of the process
9 and the work performed, and, (B) If excessive heat or humidity is created by the work process, the
10 employer shall take all feasible means to reduce such excessive heat or humidity to a degree
11 providing reasonable comfort.

12 32. Defendant's warehouse got unsafely hot in the summer and extremely cold in the
13 winter. Defendant did not have proper exhaust fans and instead raises the warehouse doors in an
14 effort to ventilate the chemicals used in the facility. This resulted in failed climate control. Plaintiff
15 and aggrieved employees worked in unbearable heat and humidity in the warehouse, and extreme
16 cold during the winter.

17 33. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by
18 the wage order. Defendant's failure to provide complaint safe working conditions for employees
19 has resulted in a violation of the Wage Order 9. By violating the wage order, Employer is liable
20 for civil penalties pursuant to §2698 *et. seq.*

21 **Failure to Provide Rest Breaks and Cool-Down Rest Periods**

22 (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq. 8 CCR 3202, Wage Order 9 ¶15.)

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

25 35. Defendants have failed to maintain a policy and practice that provides or permits its
26 employees with off-duty rest periods as required by California law. Plaintiff and aggrieved
27 employees regularly worked in excess of four hours, or a major fraction thereof, during work days
28 without being provided any rest break, despite the fact that employees are entitled to at least a ten

1 minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §§226.7,
2 512 and Wage Order 9.

3 36. As set forth above, the warehouse lacked proper ventilation and had ineffective climate
4 control given the climate issues caused by raising the warehouse doors. Title 8 of the California
5 Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that
6 employers take the steps necessary to protect employees' health and safety when the temperature
7 exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with
8 requirements of the wage orders, OSHA, and the DOSHA. Since the breaks don't comply,
9 Defendant has violated California's rest break requirements.

10 37. Defendant failed to pay Plaintiff and similarly situated employees all premium
11 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
12 periods) mandated by Labor Code §226.7 (b) for these uncompliant rest periods. As a derivative
13 claim, Plaintiff alleges that pay statements were inaccurate, failing to include required rest period
14 penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these
15 violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et*.
16 *seq.*

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

18 (Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

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

21 39. At all times relevant hereto, Labor Code Section 201 provided that, if an
22 employer such as Defendant discharged an employee, the wages earned and unpaid at the
23 time of discharge were due and payable immediately. Furthermore, Labor Code Sections
24 202 provided that, if an employee voluntarily left his or his employment, the wages earned
25 and unpaid must be paid by the employer within seventy-two (72) hours thereafter, unless
26 the employee has given seventy-two (72) hours previous notice of his or his intention to
27 leave, in which case the employee is entitled to receive his or his wages immediately at the
28 time of quitting.

1 40. Plaintiff is informed and believes and, based thereon, alleges that, Defendants
2 willfully failed to pay former aggrieved employees their earned and unpaid wages, either
3 at the time of their discharge or within seventy-two (72) hours of their quitting.
4 Furthermore, Defendants failed to pay Plaintiffs, on a timely basis, all of the wages due
5 them at the time of termination or quitting, including overtime and vacation pay wages.
6 Defendants therefore violated Labor Code Section 201 and 202.

7 41. As alleged above, by failing to pay for all hours worked by Plaintiff, Defendants
8 underpaid the actual amount of regular hours worked by Plaintiff. Consequently, Defendant
9 failed to timely pay all wages due to Plaintiff and aggrieved employees upon termination.

10 42. Labor Code Section 203 provided that, if employers such as Defendants
11 willfully fail to pay any wages of an employee who is discharged or who quits, the wages
12 of the employee shall continue as a penalty from the due date thereof at the same rate until
13 paid or until an action therefore is commenced, but the wages shall not continue for more
14 than thirty (30) days. Accordingly, aggrieved employees were discharged or who quit are
15 entitled to receive their wages for each day they were not paid, at their regular rate of pay,
16 up to a maximum of thirty (30) days.

17 43. Plaintiff will seek both restitution pursuant to Labor Code §558(a)(3) for himself
18 and members of the proposed Waiting Time Subclass” for each violation of Labor Code
19 §203 during the Class Period, in an amount according to proof based on Defendants’
20 corporate and payroll records.

21 **Failure to Timely Pay Accrued Vacation Upon Separation**

22 (Cal. Lab. Code §§227.3, 558 and 2698 *et seq.*)

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

25 45. Cal. Lab. Code §227.3 provides that “whenever a contract of employment or
26 employer policy provides for paid vacations, and an employee is terminated without having
27 taken off his vested vacation time, all vested vacation shall be paid to him as wages at his
28 final rate.”

1 46. The offer letter Plaintiff received offered vacation based on a tier approach.
2 Plaintiff qualified for 2 weeks of paid vacation, which converts to 80 hours or 1.54 hours
3 per pay period. When Plaintiff works 40 or more regular hours, he is entitled to 1.54 hours
4 of vacation accrued. If he works less than 40 regular hours, even where he works overtime
5 or cumulative with regular and overtime exceed 40 hours, he gets a pro-rata share based on
6 the regular hours worked. However, Defendant calculated vacation time based on regular
7 hours worked and is not including overtime hours worked when calculating how much
8 accrued vacation Plaintiff and aggrieved employees earned any given pay period. For
9 example, on Plaintiff's paycheck dated 2/6/20, Plaintiff worked 37.73 hours of regular time
10 and 0.92 hours of overtime. The prior pay period shows a vacation balance of 6.13 hours.
11 If Plaintiff was provided the 1.54 hours, his vacation balance at the 2/6/20 pay date would
12 have been 7.67. However, it shows only 7.58 hours, because Employer calculated the
13 vacation based only on the regular hours worked $((1.54/40) \times 37.73)$. Had they calculated
14 based on all hours worked (regular plus overtime), it would have resulted in a balance of
15 7.67 hours. Employer also failed to accrue vacation for Plaintiff's final pay date of 2/27/20.

16 47. Employers failure to pay Plaintiff and aggrieved employees unused vacation pay
17 upon termination violated Labor Code §227.3. Accordingly, Defendant is liable for failure
18 to pay accrued vacation wages to Plaintiff and aggrieved employees, and Plaintiff seeks
19 damages under §558 and 2698 *et seq.*

20 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

21 (Cal. Labor Code §§ 226, 1174, 1199, 2699 *et seq.*)

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

24 49. California Labor Code §226(a) provides that "[e]very employer shall, semimonthly or
25 at the time of each payment of wages, furnish each of his or his employees...an accurate itemized
26 statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of
27 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
28 (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee

1 is paid, (7) the name of the employee and his or her social security number..., (8) the name and
2 address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
3 the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee.”

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

13 51. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
14 wage statements to Plaintiff and the aggrieved employees, and maintain accurate records, in
15 accordance with Labor Code §§226 and 1174. As a result of the unlawful employment practices
16 discussed herein, Defendants maintained and issued inaccurate wage statements, failing to reflect
17 actual gross wages earned, including overtime and meal/rest premiums, accrued vacation wages,
18 and total regular and overtime hours worked. on the final wage statement. Further, Defendants
19 failed to include meal and rest period penalties, thus failing the requirements of Labor Code
20 §226(a). Such failures caused injury to Plaintiff and others, by, among other things, impeding them
21 from knowing the total hours worked and the amount of wages to which they are and were entitled.

22 52. Labor Code §226.3 provides, “[a]ny employer who violates subdivision (a) of Section
23 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
24 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
25 each violation in a subsequent citation, for which the employer fails to provide the employee a
26 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
27 The civil penalties provided for in this section are in addition to any other penalty provided by
28

1 law.” Plaintiff seeks penalties as permitted under Labor Code §226 for himself and other aggrieved
2 employees for each violation.

3 53. Through this representative action, Plaintiff will advance the interests of hundreds of
4 current and former employees, such that joinder is impracticable. These current and former
5 employees can be readily be identified through a review of Defendants’ payroll records and the
6 records of the company that handles payroll for Defendants.

7 54. Plaintiff seeks to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
9 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

10 **FIRST CAUSE OF ACTION**

11 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

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

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

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

20 57. 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.

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

- 25 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
26 Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 27 b. Failure to Provide Uninterrupted, Timely Meal Breaks (Civil Penalties under Labor
28 Code §§226, 226.7, 512, 1198, 2698 *et seq.*)

- c. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage Order 9 ¶15.)
- d. Failure to Provide Rest Breaks and Cool-Down Recovery Periods (Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq. 8 CCR 3202, Wage Order 9 ¶15);
- e. Failure to Timely Pay All Wages Owed (Cal. Labor Code §§201, 202, 203, 1199, 2698 et seq.);
- f. Failure to Pay Accrued Vacation (Cal. Labor Code §§227.3, 558, 2698 et seq.);
- g. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Labor Code §§226, 1174, 1199, 2699 et seq.).

59. 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).

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

61. 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.

62. 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.

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

64. 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.

65. 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.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
3 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 §2699(g)
7 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: December 18, 2020

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

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



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

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October 13, 2020

Via E-filing:

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

Via Certified U.S. Mail:

Moldex Metric, Inc.
10111 Jefferson Blvd.
Culver City, CA 90232

Via Email:

Melissa M. Smith
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071
melissasmith@sheppardmullin.com

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Jorge Resendiz
Employer: Moldex-Metric, Inc.

Dear Sir or Madam:

Jorge Resendiz (hereafter “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 employer Moldex-Metric, Inc., hereafter “Employer.”

Moldex-Metric, Inc. is a US-based privately held manufacturing company with focus on reusable respirators and hearing protection. Claimant worked in maintenance and electrical job functions in Employer’s manufacturing facility located in Culver City, California, until February of 2020.

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 Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

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

Section 2(H) of Wage Order 9 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 his coworkers have time shaved from their timecards due to auto-deducting meal break practices while being required to comply with a bell system that only provides for a 25 minute meal break, the result is underpayment for hours worked each pay period, including overtime hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, first and second 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 was either denied required breaks, forced to work through breaks, or clocked out automatically although he continued working. Claimant has also 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.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants 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 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all its hourly employees with their right to take a timely, off-duty unpaid 30-minute meal period. 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.” Wage Order 9 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.” Labor Code §1198 makes it unlawful for an employer to employ an employee for longer hours than those fixed by the wage order or under conditions of labor prohibited by the order.

In this case, all warehouse employees were on this same break schedule which would be announced by a bell system. The meal policy and practice involves sounding a 5-minute warning bell at which time employees start walking to the break area, approximately three minutes from the work area. Then, 25-minutes later, a second bell rings at which point Claimant and aggrieved employees are required to start walking back to their work stations.

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, 512, and 1198. As a derivative claim, Claimant alleges 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 Safe Working Conditions

(Cal. Labor Code §1198, Wage Order 9 ¶15.)

Employer’s warehouse would get unsafely hot in the summer and extremely cold in the winter. Employer does not have proper exhaust fans and instead raises the warehouse doors in an effort to ventilate the chemicals used in the facility. This resulted in failed climate control. Claimant and his coworkers worked in unbearable heat and humidity in the warehouse, and extreme cold during the winter.

Wage Order 9 ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Compliant Rest Breaks and Cool-Down Rest Periods

(Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq.,

8 CCR 3202, Wage Order 9 ¶15.))

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 9.

Claimant and aggrieved employees received shortened rest breaks as a result of the time it took them to walk from their workstations to the breakroom. The round-trip walking time was approximately 6 minutes, leaving employees with only a 4-minute break.

As mentioned above, the warehouse did not have proper ventilation and had ineffective climate control given the climate issues caused by raising the warehouse doors. Title 8 of the California Code of Regulations cover standards for indoor heat exposure. Section 3203 requires that employers take the steps necessary to protect employees' health and safety when the temperature exceeds 85 degrees in the workplace. Labor Code 226.7 requires that breaks comply with requirements of the wage orders, OSHA, and the DOSHA. If breaks don't comply, Employer has violated California's rest break requirements.

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 uncompliant rest periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

Employer knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Because of Employer's unlawful timekeeping practices, Claimant and employees were underpaid and those amounts remained due and owing when they separated from the company.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment within the time periods 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.*

Failure to Pay Accrued Vacation Upon Separation

(Cal. Lab. Code §§227.3, 558 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate." In this case, Employers refused and failed to pay Claimant and aggrieved employees unused vacation pay upon termination in violation of §227.3.

The offer letter Claimant received offers vacation based on a tier approach. Claimant qualified for 2 weeks of paid vacation, which converts to 80 hours or 1.54 hours per pay period. When Claimant works 40 or more regular hours, he is entitled to 1.54 hours of vacation accrued. If he works less than 40 regular hours, even where he works overtime or cumulative with regular and overtime exceed 40 hours, he gets a pro-rata share based on the regular hours worked. However, Employer is calculating vacation time based on regular hours worked and is not including overtime hours worked when calculating how much accrued vacation Claimant and aggrieved employees have earned any given pay period.

For example, on Claimant's paycheck dated 2/6/20, Claimant worked 37.73 hours of regular time and 0.92 hours of overtime. The prior pay period shows a vacation balance of 6.13 hours. If Claimant was provided the 1.54 hours, his vacation balance at the 2/6/20 pay date would have been 7.67. However, it shows only 7.58 hours, because Employer calculated the vacation based only on the regular hours worked $((1.54/40) \times 37.73)$. Had they calculated based on all hours worked (regular plus overtime), it would have resulted in a balance of 7.67 hours. Employer also failed to accrue vacation for Claimant's final pay date of 2/27/20. Accordingly, Employers are liable for failure to pay accrued vacation wages to Claimant and aggrieved employees, and Claimants seeks damages under §558 and 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records
(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*)

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.”

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.”

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, accrued vacation wages, and total regular and overtime hours worked.

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's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, 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 her if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

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

Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.
Attorney for Claimant

cc: Sahag Majarian, Esq.