

Case Management Conference
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STK-CV-UOE-2020-0010231

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

TAFIELLE SAO, an individual,

Plaintiff,

vs.

**RHINO FREIGHT LINE, INC., a
corporation; and DOES 1-100, inclusive,**

Defendants.

Case No.:

COMPLAINT

- 1. FAILURE TO PAY MINIMUM WAGE
(FOR NONPRODUCTIVE TIME)**
- 2. FAILURE TO PROVIDE PAID REST
PERIODS OR PAY PREMIUMS**
- 3. FAILURE TO PROVIDE MEAL PERIODS
OR PAY PREMIUMS**
- 4. FAILURE TO FURNISH COMPLETE AND
ACCURATE ITEMIZED WAGE
STATEMENTS**
- 5. FAILURE TO PAY ALL WAGES DUE
UPON CESSATION OF EMPLOYMENT**
- 6. PRIVATE ATTORNEYS GENERAL ACT**

Plaintiff Tafielle Sao brings this action against Rhino Freight Line, Inc., a corporation; and
Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Tafielle Sao ("Sao" or "Plaintiff") at all times relevant herein was employed in San
Joaquin County, California and was an "employee" as defined by the California Labor Code.

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2. Rhino Freight Line, Inc. ("RFLI") is a California corporation formed under the laws of California and, at all times relevant herein, was an "employer" as defined by the California Labor Code.

3. RFLI and Does 1-100 are collectively referred to as Defendants.

4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

JURISDICTION AND VENUE

6. Venue is proper in this Court because the unlawful acts alleged herein took place in San Joaquin County and Sao's place of employment with Defendants was, at all times relevant herein, located within San Joaquin County.

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GENERAL ALLEGATIONS

7. RFLI is a freight hauling company; Sao was employed with RFLI as a truck driver from February 2019 to June 19, 2020, hauling loads within California and also to other states such as Texas, Wyoming, Nebraska, Colorado, and Washington. His employment was based in Stockton, California.

8. RFLI impermissibly deducted debts from Sao's wages. RFLI would periodically advance wages to Sao (called "driver advance pay"). However, RFLI recouped these advances by making deductions from Sao's wages. As this was done with written authorization by Sao, RFLI thereby violated Labor Code section 221.

9. Throughout his employment with RFLI, Sao was paid \$0.48 cents per mile, with no hourly rate. Accordingly, he was paid by the piece ("piece-rate"). See State of California – Department of Industrial Relations, "Frequently Asked Question: Piece-Rate Compensation – Labor Code § 226.2 (AB 1513), https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.) However, the wage statements issued to Mr. Sao failed to accurately show "the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis". (See Lab. Code, § 226, subd. (a)(3).) Instead, the wage statements falsely stated that Sao was paid via commission, then showed only the total "commission" earned during that pay period. (**Exhibit 1.**) The wage statements did *not* show the number of miles (piece-rate units) driven by Sao, nor did they show his mileage rate (the applicable piece rate). Further, the wage statements issued to Sao did not show the total hours worked. Though not paid by the hour, Sao was not paid "solely based on salary" (see Lab. Code, § 226, subd. (j)(1)), nor was he exempt from overtime under any of the exemptions set forth under Labor Code section 226, subdivision (j)(2). Accordingly, RFLI violated Labor Code section 226, subdivision (a)(2). Further, and to the extent that impermissible deductions, *supra*, were not reflected in Sao's wage statements, RFLI violated Labor Code section 226, subdivision (a)(4).

1 10. Though he was paid by the mile (piece) at all times during his employment with
2 RFLI, Sao was nonetheless entitled to paid rest periods in accordance with applicable Wage Orders
3 of the Industrial Welfare Commission. However, and to the extent he was able to take a ten-minute
4 rest period for every four hours worked (which was virtually never), Sao was not provided with
5 *paid* rest periods, in violation of, in addition to applicable Wage Orders, Labor Code sections
6 226.2, subdivision (a)(1) and 226.7, subdivision (b). Further, the wage statements issued to Sao did
7 not show the total hours of compensable rest and recovery period and the rate of compensation, in
8 violation of Labor Code section 226.2, subdivision (a)(2)(A). Additionally, by failing to
9 compensate Sao with an hour of pay at his regular rate of compensation (premium pay) for every
10 workday on which a timely rest period was not provided, RFL violated Labor Code sections 226.2,
11 subdivision (a)(3) and 226.7, subdivision (c).

12 11. Furthermore, Sao was not paid for all “nonproductive time” he worked. Of course,
13 as a truck driver, Sao’s job duties entailed more than merely driving the truck—every workday, he
14 spent considerable time waiting for his truck to be loaded and unloaded, completing paperwork,
15 going through inspections, cleaning his truck, and performing other work-related tasks. However,
16 Sao was not paid the minimum wage for this nonproductive time, in further violation of Labor
17 Code section 226.2, and also in violation of Labor Code sections 1182.12 and 1197.

18 12. Sao was also not provided with the opportunity to take a timely, uninterrupted
19 thirty-minute meal period for every five hours worked. Sao typically worked 12-14 hours per day,
20 five days per week. Only approximately two to three workdays per week would Sao have the
21 chance to take a meal period; however, due to the demands of his job, Sao was typically not able to
22 begin his meal period until he had already been working for seven hours or more. Accordingly,
23 RFLI violated Labor Code section 512.

24 13. Also, Sao was not paid an hour of pay at his regular rate of compensation for each
25 workday on which he was not provided the opportunity to take a meal period on or before the end
26 of the fifth hour of work. Accordingly, RFLI further violated Labor Code section 226.7,
27 subdivision (c).

1 14. Furthermore, Sao was not provided with paid sick leave, in violation of Labor Code
2 section 246. (**Exhibit 1.**)

3 15. Last, Sao was not timely paid all wages due, both upon each pay period and upon
4 cessation of employment. Labor Code section 204 provides that all wages earned between the 1st
5 and the 15th days of the month must be paid no later than the 26th day of the month, and that all
6 wages earned between the 16th day and the last day of the month must be paid no later than the
7 10th day of the following month. Sao was paid semimonthly, with the first pay period typically
8 ending on the 15th day of the month and the second pay period ending on the last day of the month.
9 However, Sao was consistently paid his wages late. By way of example, in the wage statement
10 attached hereto as Exhibit A, Sao worked during the pay period of March 16-31, 2020, but his
11 wages were not paid until April 14, 2020—four days later than permitted. Accordingly, RFLI
12 violated Labor Code section 204.

13 16. Furthermore, at no point since Sao's employment ended did RFLI pay him all
14 rest/meal period premium pay earned and all pay earned for nonproductive time, *supra*.
15 Accordingly, RFLI violated Labor Code sections 201 and 202.

16 17. The foregoing Labor Code violations, and each of them, were committed against
17 current and other former California employees of RFLI, and within the last year.

18 18. On October 2, 2020, Sao provided written notice to RFLI and the California Labor
19 and Workforce Development Agency ("LWDA") regarding the foregoing alleged violations of the
20 Labor Code, including the facts and theories to support those allegations. (**Exhibit 2.**)

21 19. As of the filing of this Complaint, more than 65 calendar days after Sao's written
22 notice, the LWDA has not provided written notice that it intends to investigate any of Sao's
23 allegations as set forth above. Accordingly, Sao has satisfied the administrative prerequisites under
24 Labor Code section 2699.3 to bring a civil action to recover civil penalties against Defendants, in
25 addition to other remedies, for violations of the California Labor Code.

26 20. The foregoing list of misconduct is a partial list only, and set forth by way of
27 example.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGE
(Lab. Code, §§ 226.2, subd. (a)(1), 1182.12, *et seq.*)
Against Defendants

21. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

22. Labor Code section 1182.12 sets forth the minimum wage for employees in California.

23. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful.

24. Further, Labor Code section 226.2, subdivision (a)(1) provides that piece-rate employees shall be compensated separately for nonproductive time worked.

25. Nevertheless, as set forth above, Defendants failed to pay Plaintiff the minimum wage for every hour worked.

26. Labor Code section 1194.2 provides that in any action under Labor Code section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

27. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE PAID REST PERIODS OR PAY PREMIUMS
(Lab. Code, §§ 226.2, subd. (a)(3), 226.7)
Against Defendants

28. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

29. Labor Code section 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

1 a. No employer shall require any employee to work during any meal or rest period
2 mandated by an applicable order of the Industrial Welfare Commission.

3 b. If an employer fails to provide an employee a meal period or rest period in
4 accordance with an applicable order of the Industrial Welfare Commission, the
5 employer shall pay the employee one additional hour of pay at the employee's
6 regular rate of compensation for each work day that the meal or rest period is
7 not provided.

8 30. Section 12 of the applicable IWC Wage Order provides:

9 "(A) Every employer shall authorize and permit all employees to take rest periods,
10 which insofar as practicable shall be in the middle of each work period. The authorized
11 rest period time shall be based on the total hours worked daily at the rate of ten (10)
12 minutes net rest time per four (4) hours or major fraction thereof. However, a rest
13 period need not be authorized for employees whose total daily work time is less than
three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours
worked for which there shall be no deduction from wages."

14 31. Furthermore, Labor Code section 226.2, subd. (a)(3) provides that piece-rate employees
15 shall be compensated for rest and recovery periods at a regular hourly rate.

16 32. During the relevant time period, Plaintiff was not provided with rest breaks as required
17 by law and did not receive an additional hour of premium pay for each missed rest break.

18 33. Wherefore, Plaintiff has been injured as set forth above and requests relief as
19 hereinafter provided.

20 **THIRD CAUSE OF ACTION**
21 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
22 **(Lab. Code, §§ 226.7, 512)**
Against Defendants

23 34. Plaintiff hereby realleges and incorporates by reference each and every allegation set
24 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 35. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated
27 by Order of the Industrial Welfare Commission. It states:

- 1 a. No employer shall require any employee to work during any meal or rest period
2 mandated by an applicable order of the Industrial Welfare Commission.
3 b. If an employer fails to provide an employee a meal period or rest period in
4 accordance with an applicable order of the Industrial Welfare Commission, the
5 employer shall pay the employee one additional hour of pay at the employee's
6 regular rate of compensation for each work day that the meal or rest period is not
7 provided.

8 36. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may
9 not employ a person for a work period of more than 5 hours per day without providing that employee a
10 meal period of not less than 30 minutes, except that if the total work period per day is not more than
11 six hours, the meal period may be waived by mutual consent of both the employer and employee. An
12 employer may not employ a person for a work period of more than 10 hours per day without providing
13 an employee with a second meal period of not less than 30 minutes, except that if the total work period
14 per day of the employee is no more than twelve (12) hours, the meal period may be waived by mutual
15 consent of both the employer and employee, and if the first meal period was not waived.

16 37. During the relevant time period, Plaintiff was not provided with compliant meal breaks,
17 nor did he receive an additional hour of premium pay for each non-compliant meal break.

18 38. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
19 provided.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
22 **(Lab. Code, §§ 226, subd. (a), 226.2, subd. (a))**
23 **Against Defendants**

24 39. Plaintiff hereby realleges and incorporates by reference each and every allegation set
25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
26 allegations of this cause of action.

27 40. Pursuant to Labor Code section 226, subdivision (a), "every employer shall,
28 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a

1 detachable part of the check, draft, or voucher paying the employee's wages, or separately when the
2 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
3 wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned
4 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net
5 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
6 employee and only the last four digits of his or her social security number or an employee
7 identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all
8 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
9 each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of
10 pay and the total hours worked for each temporary services assignment."

11 41. An employee suffering injury as a result of the knowing and intentional failure by an
12 employer to comply with Labor Code section 226, subdivision (a) is entitled to recover the greater of
13 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
14 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the
15 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
16 attorney's fees. (Lab. Code, § 226, subd. (e)(1).)

17 42. An employee is deemed to suffer injury if the employer fails to provide a wage
18 statement or if the employer fails to provide accurate and complete information as required by any one
19 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
20 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
21 during the pay period or any of the other information required to be provided pursuant to Labor Code
22 section 226, subdivision (a)(2)-(4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
23 name and address of the employer and iv) the name of the employee and the last four digits of his or
24 her social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A)
25 and (B)(i)-(iv).) "Promptly and easily determine" means a reasonable person would be able to readily
26 ascertain the information without reference to other documents or information. (Lab. Code, § 226,
27 subd. (e)(2)(C).)

1 43. Additionally, Labor Code section 226.2, subdivision (a)(2) provides that, for piece-rate
2 employees, their itemized wage statement must show (1) the total hours of compensable rest and
3 recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay
4 period; and (2) the total hours of nonproductive time, the rate of compensation, and the gross wages
5 paid for that time during the pay period.

6 44. During the relevant time period, Defendants intentionally and willfully failed to furnish
7 accurate itemized wage statements in violation of Labor Code sections 226, subdivision (a) and 226.2,
8 subdivision (a)(2).

9 45. Wherefore, Plaintiff has been injured as set forth above and requests relief as
10 hereinafter provided.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF EMPLOYMENT**
13 **(Lab. Code, § 201)**
 Against Defendants

14 46. Plaintiff hereby realleges and incorporates by reference each and every allegation
15 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
16 allegations of this cause of action.

17 47. Labor Code section 201 requires an employer to pay an employee all wages earned
18 and unpaid at the time the employer discharges the employee. Labor Code section 202 requires an
19 employer to pay the employee all wages due no later than 72 hours after the employee quits his
20 employment.

21 48. Labor Code section 203 provides: "If an employer willfully fails to pay, without
22 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
23 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
24 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
25 the wages shall not continue for more than 30 days".

26 49. During the relevant time period, Defendants failed to pay Plaintiff all earned but
27 unpaid wages upon cessation of employment.

1 50. Wherefore, Plaintiff has been injured as set forth above and requests relief as
2 hereafter provided.

3 **SIXTH CAUSE OF ACTION**
4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **(Lab. Code, § 2698 *et seq.*)**
6 **Against Defendants**

7 51. Plaintiff hereby realleges and incorporates by reference each and every allegation
8 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 52. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
11 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
12 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
13 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
14 to the procedures outlined in Labor Code section 2699.3.

15 53. Plaintiff was employed by Defendants and the alleged violations were committed
16 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
17 defined by Labor Code section 2699, subdivision (c). Other current and former employees are also
18 aggrieved employees in that one or more of the alleged violations were also committed against
19 them during their time of employment with Defendants.

20 54. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable
21 in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is
22 specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for
23 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
24 each subsequent violation.

25 55. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
26 employee may recover the civil penalty on behalf of himself or herself and other current or former
27 employees against whom one or more of the alleged violations was committed. Furthermore, any
28

1 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
2 and costs.

3 56. Wherefore, Plaintiff and other employees (current and former) have been aggrieved
4 as set forth above and request relief as hereafter provided.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

7 **For the First through Fifth Causes of Action:**

- 8 1. For unpaid wages, including rest and meal premiums;
- 9 2. For liquidated damages, including those available under Labor Code section
10 1194.2;
- 11 3. That this Court award injunctive relief, including that available under Labor Code
12 section 226(h);
- 13 4. That this Court award statutory penalties including, but not limited to, those
14 available under Labor Code sections 203 and 226(e);
- 15 5. That this Court award statutory attorneys' fees and costs, including those available
16 under Labor Code sections 218.5, 226, subdivision (e)(1), and 1194, as well as
17 Code of Civil Procedure section 1021.5;
- 18 6. That this Court award prejudgment and post-judgment interest according to any
19 applicable provision of law or as otherwise permitted by law, including those
20 available under Civil Code sections 3287(a) and 3289(b); and
- 21 7. That this Court award such other and further relief as the court deems just and
22 proper.

23 **For the Sixth Cause of Action:**

- 24 1. For civil penalties, including but not limited to those available under Labor Code
25 sections 210, 226.3, 558, 1197.1, and 2699(f);
- 26 2. For injunctive relief;

- 1 3. For statutory attorneys' fees and costs, including but not limited to those available
2 under Labor Code section 2699(g);
3 4. For prejudgment and post-judgment interest according to any applicable provision
4 of law or as otherwise permitted by law, including those available under Civil Code
5 sections 3287(a) and 3289(b); and
6 5. For such other and further relief as the court deems just and proper.

7 ///

8 **DATED:** December 7, 2020

MAYALL HURLEY P.C.

9 By _____


JOHN P. BRISCOE
Attorneys for Plaintiff
TAFILELE SAO

Exhibit 1

04/14/2020

Tafilele Sao

**537.68

*****Five hundred thirty-seven and 68/100

Tafilele Sao

[REDACTED]
[REDACTED]

Settlement For 4/15/20

EMPLOYER

Rhino Freight Line, Inc
10324 Almanor Cir
Stockton CA 95219

PAY PERIOD

Period Beginning	03/16/2020
Period Ending:	03/31/2020
Pay Date:	04/14/2020
Total Hours:	0.00

EMPLOYEE

Tafilele Sao

[REDACTED]

SS#: .. [REDACTED]

NET PAY:

\$537.68

MEMO:

Settlement For 4/15/20

<u>PAY</u>	<u>Hours</u>	<u>Rate</u>	<u>Current</u>	<u>Y TD</u>
Commission	-	-	600.00	600.00

<u>DEDUCTIONS</u>	<u>Current</u>	<u>YTD</u>
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<u>TAXES</u>	<u>Current</u>	<u>Y TD</u>
Federal Income Tax	10.42	10.42
Social Security	37.20	37.20
Medicare	8.70	8.70
CA Income Tax	0.00	0.00
CA State Disability Ins	6.00	6.00

<u>SUMMARY</u>	<u>Current</u>	<u>Y TD</u>
Total Pay	\$600.00	\$600.00
Taxes	\$62.32	\$62.32
Deductions	\$0.00	\$0.00

Net Pay

\$537.68

Exhibit 2

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RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

October 2, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Rhino Freight Line, Inc.
10324 Almanor Cir.
Stockton, CA 95219

Re: Tafirole Sao

To whom it may concern:

This firm represents Tafirole Sao in relation to his former employment with Rhino Freight Line, Inc. ("RFLI"). In accordance with California Labor Code section 2699.3, this letter shall serve as Mr. Sao's written notice to the Labor and Workforce Development Agency ("LWDA") and RFLI regarding the following violations, and facts and theories supporting those violations, on Mr. Sao's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of RFLI.

RFLI is a freight hauling company; Mr. Sao was employed with RFLI as a truck driver, hauling loads within California and also to other states such as Texas, Wyoming, Nebraska, Colorado, and Washington.

RFLI impermissibly deducted debts from Mr. Sao's wages. RFLI would periodically advance wages to Mr. Sao (called "driver advance pay"). However, RFLI would recoup these advances by making deductions from Mr. Sao's wages. Mr. Sao did not authorize these deductions in writing. Accordingly, RFLI violated Labor Code section 221.

Throughout his employment with RFLI, Mr. Sao was paid \$0.48 per mile, with no hourly rate. Accordingly, Mr. Sao was paid by the piece ("piece-rate"). (See State of California – Department of Industrial Relations, "Frequently Asked Questions: Piece-Rate Compensation –

Labor and Workforce Development Agency
Rhino Freight Line, Inc.
Re: Tafirole Sao
October 2, 2020
Page 2 of 3

Labor Code § 226.2 (AB 1513), https://www.dir.ca.gov/pieceratebackpayelection/AB_1513_FAQs.htm.) However, the wage statements issued to Mr. Sao failed to accurately show “the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis”. (See Lab. Code, § 226, subd. (a)(3).) Instead, the wage statements falsely stated that Mr. Sao was paid via commission, then showed only the total “commission” earned during that pay period. (**Exhibit A.**) The wage statements did *not* show the number of miles (piece-rate units) driven by Mr. Sao, nor did they show his mileage rate (the applicable piece rate). Accordingly, RFLI violated Labor Code section 226, subdivision (a)(3). Furthermore, the wage statements did not show the total hours worked by Mr. Sao. Though he was not paid by the hour, Mr. Sao was not paid “solely based on salary” (see Lab. Code, § 226, subd. (j)(1)), nor was he exempt from overtime under any of the exemptions set forth under Labor Code section 226, subdivisions (j)(2). Accordingly, RFLI violated Labor Code section 226, subdivision (a)(2). Last, and to the extent that impermissible deductions, *supra* were not reflected in Mr. Sao’s wage statements, RFLI violated Labor Code section 226, subdivision (a)(4).

Though he was paid by the mile (piece) at all times during his employment with RFLI, Mr. Sao was nonetheless entitled to paid rest periods in accordance with applicable Wage Orders of the Industrial Welfare Commission. However, and to the extent he was able to take a ten-minute rest period for every four hours worked (which was virtually never), Mr. Sao was not provided with *paid* rest periods, in violation of, in addition to applicable Wage Orders, Labor Code section 226.2, subdivision (a)(1). Further, the wage statements issued to Mr. Sao did not show the total hours of compensable rest and recovery periods and the rate of compensation, in violation of Labor Code section 226.2, subdivision (a)(2)(A). Additionally, by failing to compensate Mr. Sao with an hour of pay at his regular rate of compensation (premium pay) for every workday on which a timely rest period was not provided, RFLI violated Labor Code sections 226.2, subdivision (a)(3) and 226.7.

Furthermore, Mr. Sao was not paid for all nonproductive time he worked. Of course, as a truck driver, Mr. Sao’s job duties entailed more than merely driving the truck—every workday, he spent considerable time waiting for his truck to be loaded and unloaded, completing paperwork, going through inspections, cleaning his truck, and performing other work-related tasks. However, Mr. Sao was not paid the minimum wage for this nonproductive time, in further violation of Labor Code section 226.2, and also in violation of Labor Code sections 1182.12 and 1197.

Mr. Sao was also not provided with the opportunity to take a timely, uninterrupted thirty-minute meal period for every five hours worked. Mr. Sao typically worked 12-14 hours per day, five days per week. Only approximately two to three workdays per week would he have the opportunity to take a meal period; however, due to the demands of his job, Mr. Sao was typically not able to begin his meal period until he had already been working for seven hours or more. Accordingly, RFLI violated Labor Code section 512. Also, Mr. Sao was not paid an hour of pay at his regular rate of compensation for each workday on which he was provided the opportunity

Labor and Workforce Development Agency
Rhino Freight Line, Inc.
Re: Tafielle Sao
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to take a meal period on or before the end of the fifth hour of work. Accordingly, RFLI further violated Labor Code section 226.7.

Last, Mr. Sao was not timely paid all wages due, both upon each pay period and upon cessation of employment. Labor Code section 204 provides that all wages earned between the 1st and the 15th day of the month must be paid no later than the 26th day of the month, and that all wages earned between the 16th day and the last day of the month must be paid no later than the 10th day of the following month. Mr. Sao was paid semimonthly, with the first pay period typically ending on the 15th of the month and the second pay period ending on the last day of the month. However, Mr. Sao was consistently paid his wages late. By way of example, in the wage statement attached hereto as Exhibit A, Mr. Sao worked during the pay period of March 16-31, 2020, but his wages were not paid until April 14, 2020—four days later than permitted. Accordingly, RFLI violated Labor Code section 204. Furthermore, at no point since Mr. Sao's employment ended did RFLI pay him all rest/meal period premium pay earned and all pay earned for nonproductive time, *supra*. Accordingly, RFLI violated Labor Code sections 201 and 202.

The foregoing Labor Code violations, and each of them, were committed against current and other former California employees of RFLI, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Mr. Sao intends to file a civil complaint against RFLI pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on his behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE

Exhibit A

04/14/2020

Tafilele Sao

**537.68

*****Five hundred thirty-seven and 68/100

Tafilele Sao

[REDACTED]
[REDACTED]

Settlement For 4/15/20

EMPLOYER

Rhino Freight Line, Inc
10324 Almanor Cir
Stockton CA 95219

PAY PERIOD

Period Beginning 03/16/2020
Period Ending: 03/31/2020
Pay Date: 04/14/2020
Total Hours: 0.00

EMPLOYEE

Tafilele Sao

[REDACTED]

SS#: .. [REDACTED]

NET PAY:

\$537.68

MEMO:

Settlement For 4/15/20

<u>PAY</u>	<u>Hours</u>	<u>Rate</u>	<u>Current</u>	<u>Y TD</u>
Commission	-	-	600.00	600.00

<u>DEDUCTIONS</u>	<u>Current</u>	<u>YTD</u>
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<u>TAXES</u>	<u>Current</u>	<u>Y TD</u>
Federal Income Tax	10.42	10.42
Social Security	37.20	37.20
Medicare	8.70	8.70
CA Income Tax	0.00	0.00
CA State Disability Ins	6.00	6.00

<u>SUMMARY</u>	<u>Current</u>	<u>Y TD</u>
Total Pay	\$600.00	\$600.00
Taxes	\$62.32	\$62.32
Deductions	\$0.00	\$0.00

Net Pay

\$537.68