



Reply to:
2535 Kettner Boulevard, Suite 2A2
San Diego, CA 92101

December 2, 2020

VIA ONLINE SUBMISSION

PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Aman Brar
President
South Star Logistics, Inc.
9668 Milliken Ave., Suite 104-339
Rancho Cucamonga, CA 91730

Ajit Singh Johal
Agent for Service
South Star Logistics, Inc.
8608 Utica Ave., Suite 220AJ
Rancho Cucamonga, CA 91730

Aman Brar
5416 Trabuco Court
Rancho Cucamonga, CA 91737

**Re: Notice Pursuant to Labor Code § 2699.3(a)
Rafael Salas and all Aggrieved Employees**

To Whom It May Concern:

Please be advised that Rafael Salas ("Claimant" or "Mr. Salas") has retained our firm to represent him for claims against his former employer, South Star Logistics, Inc. ("SSL," "Employer," or the "Company") and Aman Brar ("Brar") (collectively, "Employers").

This letter serves as notice to the Labor & Workforce Development Agency ("LWDA") of the Labor Code violations of the Company. Notice is hereby provided to the LWDA and the Company, in accordance with Labor Code § 2699.3(a). Claimant desires to file a civil action to enforce his rights under the Labor Code and seeks compensation accordingly.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant also intends to represent **all other aggrieved employees who performed work for Employer in California from May 25, 2019 and continuing until a final judgment in the subsequent civil action corresponding to this matter** (the "PAGA Liability Period") and who have suffered at least one of the wage and hour violations described herein during their employment.

We have completed a preliminary investigation into the Company's unlawful misclassification, payroll, and meal and rest period policies with respect to Mr. Salas and other aggrieved employees at SSL while employed there and continuing to the present, on

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information and belief. Based on the evidence already available, we have concluded that he has representative claims for: (1) failure to pay contractual overtime wages in violation of California Labor Code §§ 510, 1194; (2) liquidated damages for not paying at least the minimum wage in violation of California Labor Code § 1194.2; (3) failure to provide properly itemized wage statements in violation of California Labor Code § 226; (4) unlawful deductions from wages in violation of California Labor Code §§ 221, 224; (5) failure to reimburse for necessary, work-related expenses in violation of California Labor Code § 2802; and (6) failure to pay final wages in violation of California Labor Code § 203. The bases for these violations and corresponding remedies are described below.

I. STATUTES OF LIMITATIONS TOLLING

Pertinent to the instant matter, the Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended from April 6, 2020 to October 1, 2020 the statutes of limitations for civil causes of action that exceed 180 days. Thus, the statute of limitations on the Claimant's representative claims under PAGA, typically a one-year period, were tolled until October 1, 2020. As such, for purposes of Claimants' representative claims on behalf of themselves, the aggrieved, and the State of California, the statutory period relates back one year from on or May 25, 2020, i.e., the earliest allowable date due to tolling at the time Claimant filed his civil complaint.

II. FACTUAL BACKGROUND

South Star Logistics, Inc. began several years ago with one or two docks for loading and consolidating freight while Mr. Salas was initially employed there, and has grown substantially each year with more than a dozen loading docks and dozens of new trucks. Mr. Salas was there to assist in the Company's growth over the past nearly seven years, and performed all tasks asked of him regardless of whether it fit within his job description or not.

Mr. Salas' job duties over the past several years involved freight and lading work, consolidating loads into other trucks upon arrival so that they could be routed to their next destination. Mr. Salas operated a forklift and performed manual labor to get the loads properly directed. Mr. Salas would also be available to coordinate loads as they were coming in, to best facilitate the customer's needs. Mr. Salas was sometimes asked to use his personal truck for making some deliveries, and his use of his personal cell phone was essential for coordinating various drivers and getting them turned around. Mr. Salas sometimes worked 24-hour shifts to accommodate Mr. Brar's requests.

Mr. Salas regularly worked 65- to 70-hour weeks but was only paid for approximately 25 hours per week, as represented on his wage statements. While Mr. Salas did receive some cash in addition to what was represented on his wage statement, this is an obvious violation of the Labor Code and skirts multiple tax laws as well. He was never properly compensated for the number of hours worked each week. Even if the compensation added to \$750 per week (cash and check), this would not compensate Mr. Salas for the actual time spent at work. Nor would \$900 per week. On information and belief, Brar and the Company subjected other employees to the same or similar compensation scheme—i.e., a “half-cash-half-payroll,” off-the-books scheme.

The Company's desire to skirt labor laws by paying half in cash and half by check is a violation of state and federal tax laws and is criminal. The amount paid in cash represents amounts earned which should have had withholdings for federal income tax, payroll taxes,

state income tax, and other mandatory figures including disability. The underpayment to the state and federal governments constitutes tax fraud and tax evasion, which have fines, restitution, and criminal prosecution as natural consequences.

While Mr. Salas was properly paid hourly for a few years, for some unexplained reason, the Company chose to unlawfully pay him on a salary basis, although none of Mr. Salas' duties fall under any lawful exemption. Accordingly, Mr. Salas was misclassified, and underpaid, as the salary did not accurately reflect all hours worked. As mentioned, when he was hourly, he was also underpaid; the wage statements reflect only about 25 hours per week, on average, a shortfall of approximately 40 hours per week, including overtime. On information and belief, Brar and the Company unlawfully misclassified other employees during the relevant liability period.

The Company had no policy to provide timely, compliant meal and rest periods required under the Labor Code and under Industrial Welfare Commission ("IWC") Wage Order 9; Mr. Salas was required to always be ready to handle an incoming or outgoing load due to the nature of the business. Despite Mr. Salas being unable to take timely breaks, he was never paid a premium wage in violation of the Labor Code. On information and belief, Brar and the Company failed to provide compliant meal and rest periods to other employees throughout the relevant liability period.

Throughout the relevant liability period, Mr. Salas was required to use his personal cell phone for necessary, work-related duties and responsibilities. The Company never reimbursed him for his work-related use of his cell phone, in violation of California law. As mentioned, Mr. Salas was also asked to use his personal vehicle for work-related activities and was never reimbursed for mileage for this use. On information and belief, Brar and the Company subjected other employees to the same unlawful non-reimbursement scheme.

Throughout the relevant liability period, the Company failed to issue Mr. Salas and other employees accurate wage statements which reflected the actual number of hours worked, actual number of overtime hours worked, and the meal and rest period premiums he was owed. Failure to issue accurate wage statements is a violation of Labor Code section 226(a).

Mr. Salas complained to Mr. Brar about being compensated on a salary basis, when he was a non-exempt employee. Mr. Brar's response to this complaint was to fire Mr. Salas, after more than seven years of loyal service, in direct retaliation for complaining about Labor Code violations. While Mr. Salas received a letter stating that his employment was ending due to the Covid-19 crisis, this is belied by the fact that Mr. Brar hired someone else to fill Mr. Salas' position two days after Mr. Brar fired Mr. Salas for complaining about Labor Code violations. Mr. Brar also sent Mr. Salas a text message the day they argued about whether he was salaried or non-exempt, stating that he should not return to work.

Because Mr. Salas never received all compensation owed to him, he did not receive all compensation due him upon termination, in violation of Labor Code section 203, which carries its own penalties. On information and belief, Brar and the Company subjected other employees to the same final pay violations during the relevant liability period.

III. LIABILITY

A. Overtime Wages

Mr. Salas' duties as the warehouse manager categorize him as a non-exempt employee, which is admitted in Mr. Salas' wage statements. Accordingly, Mr. Salas was entitled to be paid overtime for all hours worked over 8 in a day or 40 in a week. Mr. Brar's conduct in paying part check, part cash, and purposefully refusing to keep accurate time records with respect to similarly aggrieved employees, together with misclassifying Mr. Salas as a salaried employee, prevented Mr. Salas and other aggrieved employees from accurately recording their time with the Company.

Because Mr. Salas and other aggrieved employees were actively prevented from accurately recording their time, the courts will rely upon their own recollection of time spent at SSL. *Furry v. East Bay Publishing LLC*, 30 Cal.App.5th 1072 (2018); *See also Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946) (employees should not be "penalize[d]" for the lack of records because "[s]uch a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty [and]...allow the employer to keep the benefits of an employee's labors without paying due compensation"); *Duran v. US. Bank National Assn.*, 59 Cal. 4th 1, 41 (2014) ("Under [the *Mt. Clemens*] burden-shifting framework, an employer is not allowed to benefit from its own poor recordkeeping").

Mr. Salas conservatively estimates that he worked 65-70 hours per week during the last several years. His wage statements do not reflect any overtime hours (and in fact represent a gross underreporting of actual hours worked). Other wage statements reflect a straight-time rate of \$11.00 per hour in 2018, *and also* an overtime rate of \$11.00 per hour, a facial violation of overtime laws. His last hourly rate reflected on his 2020 wage statements is \$15.00 per hour, and \$22.50 for an overtime rate. Assuming 40 hours paid at straight time (\$600), and unpaid overtime of 25 hours per week for a 65-hour week (\$562.50), Mr. Salas should have been paid an average of \$1,162.50 per week. He was not. Nor were his similarly aggrieved colleagues.

In 2018, it appears that Mr. Salas was typically paid \$330 per week. Comparing \$330 to \$1162.50 per week which he was owed, Mr. Salas was shorted \$832.50 per week. The Company will not be able to introduce any evidence of under-the-table payment, as it constitutes tax fraud. Mr. Salas was not alone; all similarly situated aggrieved employees suffered underpayment by SSL.

B. Wage and Hour Statements

Employers must furnish employees at the time wages are paid with an itemized written statement showing the nine items delineated in Labor Code § 226(a).

An employee who suffers injury by an employer's knowing and intentional failure to maintain and provide the wage statements with the nine itemized requirements may recover the greater of all actual damages or \$50 for the initial pay period and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, in addition to costs and reasonable attorney fees. Cal. Lab. Code §226(e)(1). An employee is

deemed to "suffer injury" for purposes of the above penalty if the employer fails to provide a wage statement. Cal. Lab. Code §226(e)(2)(A).

Because of the Company's willful underreporting of all hours worked, all time worked, and failure to pay meal and rest period premiums, Mr. Salas and all other similarly aggrieved employees never received statutorily compliant and accurate wage statements. The Company's unlawful policy of reporting an overtime rate at the same rate as straight time is unlawful on its face. As such, Mr. Salas and similarly aggrieved employees are entitled to recover civil penalties.

C. Premium Wages for Non-Compliant Lunch and Rest Breaks

Employees are entitled to a minimum of a thirty (30) minute duty-free lunch period for every five (5) hours worked. A second lunch period is required if an employee works more than ten (10) hours per day. If an employer fails to provide a legally required lunch period, the employer must pay the employee one (1) additional hour of pay at the employee's regular rate of pay per day. Moreover, employers are required to give each employee at least a ten (10) minute paid break for each four (4) hours or major fraction of four (4) hours worked. If an employer fails to provide a rest period, the employer must pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

The nature of Mr. Salas' and other similarly aggrieved employees' roles with the Company made it virtually impossible for them to take compliant meal and rest periods, even if they wanted to. Mr. Salas and other aggrieved employees were compelled to eat while on duty to meet Company and customer expectations regarding shipping times. Further, the Company lacked any compliant meal and rest period policy authorizing timely break where employees were relieved of all duties during that time.

Accordingly, the Company should have paid Mr. Salas and other similarly aggrieved employees at least one extra hour of pay on days in which they worked over five hours without a compliant lunch (most days). Additionally, the same employees should have been paid a rest period premium for each shift where they were not authorized or permitted to take a duty-free 10-minute rest period when earned under California law and Wage Order 9.

D. Unreimbursed Expenses

Under California law, an employee is entitled to be reimbursed by his or her employer for expenses or losses incurred in direct consequence of the discharge of the employee's work duties. Cal. Lab. Code § 2802. This right is not waivable. Cal. Lab. Code § 2804; *Gattuso v. Harte-Hanks* (2007) 42 Cal.4th 554, 569-70 ("Under section 2804, however, any agreement made by the employee is null and void insofar as it waives the employee's rights to full expense reimbursement under section 2802.").

Mr. Salas and other similarly aggrieved employees were required to use their personal cell phones to perform necessary work-related tasks, such as coordinating incoming and outgoing shipments. The Company failed to reimburse Mr. Salas or other aggrieved employees for this necessary business expense. Courts have found that \$50 per month is a

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reasonable expense reimbursement for cell service. *Cochran v. Schwan's Home Services, Inc.*, 228 Cal.App.4th 1137, 1140 (2014).

E. Waiting Time Penalties

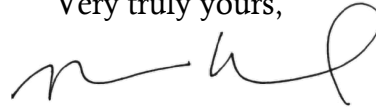
An employer who willfully fails to pay any wages due an employee who is discharged on the discharge date may be assessed continuing wages as a penalty from the date the wages were due up to a maximum of 30 days. Cal. Lab. Code § 203. The penalty is calculated by multiplying the daily wage rate of the employee by 30 days. *Mamika v. Barca*, 68 Cal.App.4th 487 (1998).

The Company willfully withheld earned wages from Mr. Salas and other aggrieved employees as described above. Those employees who have been separated from employment during the past year are therefore also entitled to penalties triggered under Labor Code section 203. Labor Code §2699.5.

IV. CONCLUSION

The facts articulated above violate provisions of the Labor Code identified in this writing and otherwise. By virtue of this letter, we hereby notify the LWDA of Employer's violations. In accordance with Labor Code § 2699.3(a)(2)(A), please notify us within 60 days, at our San Diego office address, whether you will investigate this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Nathan N. Kased', with a stylized flourish at the end.

Nathan N. Kased, Esq.

NK

cc: Mr. Salas