

ANGELA HOOPER (SBN 334269)
LAW OFFICES OF ANGELA HOOPER
315 Wall Street, Suite 8
Chico, CA 95928
Telephone: (530) 680-4689
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Attorney for Plaintiff,
MARCOS PRECIADO-SANCHEZ

SUPERIOR COURT OF CALIFORNIA

COUNTY OF BUTTE

MARCOS PRECIADO-SANCHEZ,
individually, and on behalf of all other similarly
situated aggrieved individuals,

Plaintiffs,

v.

GARY'S AIRBAG SERVICE and DOES 1-10,
inclusive,

Defendants.

Case No. 21CV01957

**DECLARATION OF ANGELA HOOPER
IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT**

Date: February 15, 2023

Time: 9:00 a.m.

Judge: Hon. Tamara Mosbarger

Complaint Filed: August 4, 2021

Trial Date: None Set

I, Angela Hooper, declares as follows:

1. I am an attorney duly licensed to practice before all Courts in the State of California. I am the attorney of record for Plaintiff Marcos Preciado-Sanchez with regards to the above-captioned matter. I have personal knowledge of the facts recited herein, and if called as witness can competently testify thereto.

2. The Parties to this action reached an agreement for a PAGA Action Settlement. A true and correct copy of the PAGA Action Settlement Agreement and Release is attached hereto as **EXHIBIT 1**.

3. Plaintiff Marcos Preciado-Sanchez provided written notice via online submission to the LWDA on or about March 23, 2021 and provided an amended notice via online submission on or about June 9, 2021. True and correct copies of the notices provide to the LWDA are attached hereto as **EXHIBIT 2**.

4. After serving the above notices on the LWDA and Defendant, Defendant did not provide notice of cure, and the LWDA did not provide notice it intended to investigate.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Date: January 18, 2023

h

Angela Hooper

EXHIBIT 1

ANGELA HOOPER (SBN 334269)
SAVAGE, LAMB, REIMER & HOOPER, LLP
1550 Humboldt Road, Suite 4
Chico, CA 95928
Telephone: (530) 592-3861
Fax: (530) 592-3865
Email: ahooper@slrhlaw.com

Attorney for Plaintiff,
MARCOS PRECIADO-SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF BUTTE

MARCOS PRECIADO-SANCHEZ,
individually and on behalf of all other similarly
situated aggrieved individuals,

Plaintiffs,

v.

GARY'S AIRBAG SERVICE; and DOES 1
through 10, inclusive,

Defendants.

Case No. 21CV01957

**PAGA ACTION SETTLEMENT
AGREEMENT AND RELEASE**

PAGA ACTION SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into by and between Plaintiff Marcos Preciado-Sanchez ("Plaintiff") and Defendant Gary's Airbag Service ("Defendant") (collectively the "Parties"). The Parties Agreement is hereby reached and based on the incorporation of each of the paragraphs below:

I. RECITALS

A. WHEREAS, to avoid the costs and expenses of ongoing litigation and without any admission of liability, the Parties desire to settle, fully and finally, in the manner set forth herein, all differences between them which have arisen, or which may arise, prior to, or at the time of the execution of this Agreement, including but in no way limited to, any and all claims and controversies related to, in connection with, or arising out of the employment relationship between Plaintiff and Defendant;

1 B. WHEREAS, Plaintiff alleged a representative claim under the Private Attorneys General Act
2 ("PAGA") for violation of California Labor Code §§ 201-203, 226, 226.3, 226.7, 256, 512, 558,
3 558.1, 1102.5, 1194, 1197.1, 2802 and 2698 *et seq.*, based on the failure to pay minimum wages;
4 failure to provide meal periods or premium pay in lieu thereof; failure to provide rest breaks or
5 premium pay in lieu thereof; failure to provide accurate wage statements; failure to pay final
6 wages; failure to pay reimbursement expenses; provisions regulating hours and days of work in
7 Industrial Welfare Commission Order; failure to maintain accurate records; and whistleblower
8 retaliation. Plaintiff submitted notice of said claims to the Labor and Workforce Development
9 Agency ("LWDA") on March 23, 2021 and which was amended on June 9, 2021 (together, the
10 "PAGA Notice");

11 C. WHEREAS, the LWDA has not stated it intends to investigate the allegations raised in Plaintiff's
12 PAGA Notice, thereby authorizing Plaintiff to act as a private attorney general on behalf of himself
13 and all other similarly situated employees of Defendant for the PAGA Claims;

14 D. WHEREAS, Plaintiff filed a complaint in the Butte County Superior Court (Case No. 21CV01957)
15 on August 4, 2021 alleging both individual claims and a PAGA claim against Defendant (the
16 "Lawsuit");

17 E. WHEREAS, the Parties have since engaged in further discussions concerning the merits of
18 Plaintiff's claims;

19 F. WHEREAS, the Parties have agreed to settle Plaintiff's individual claims pursuant to a separate
20 and distinct settlement agreement;

21 G. WHEREAS, the Parties wish to settle and resolve Plaintiff's PAGA Action pursuant to the terms
22 laid out in this Agreement.

23 NOW, THEREFORE, AND SUBJECT TO COURT APPROVAL, the Parties agree as follows:

24 **II. AGREEMENT**

25 A. Non-Admission of Liability, Wrongdoing, or Status as a Representative Action.

26 This Agreement shall not in any way be construed as an admission by Defendant that it acted
27 wrongfully with respect to Plaintiff or any other employees or individuals. Defendant specifically
28 disclaims any liability to, or wrongful acts against Plaintiff, on the part of itself, franchisors,

1 parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, or agents.
2 Defendant denies that there is any factual evidence to support any claims that Plaintiff may bring
3 on behalf of Plaintiff or other alleged aggrieved employees or alleged similarly situated employees,
4 or by Plaintiff on his own behalf.

5 B. Confidentiality.

6 The Parties agree not to disclose the terms of this settlement except in court papers or if required
7 by the legal process (including submissions to the Court for purposes of obtaining approval of the
8 settlement or submissions to the LWDA in order to comply with the requirements of PAGA),
9 except that Plaintiff's counsel may put publicly available information about the settlement in any
10 description of their experience or the like in order to describe their experience to a court. Plaintiff
11 and his counsel shall not issue a press release, hold a press conference, publish information about
12 the settlement on any website, or otherwise publicize the settlement. Plaintiff and his counsel
13 agree not to respond to any press inquiries except to refer reporters to the papers filed with the
14 Court. This provision does not apply to any needed disclosures by Plaintiff or his counsel to their
15 accountants.

16 C. Settlement Payment.

17 In consideration for the covenants, promises, waivers, and releases contained in this Agreement,
18 and subject to Court approval, Defendant shall pay the sum of Twenty-Five Thousand Dollars
19 (\$25,000.00) in full and final settlement of the PAGA Claim. As described in more detail below,
20 no more than Eight Thousand Three Hundred Twenty-Five Dollars (\$8,325.00) will be allocated
21 to Plaintiff's attorneys' fees; no more than One Thousand Dollars (\$1,000.00) will be allocated to
22 Plaintiff's attorneys' costs; no more than Five Thousand Dollars (\$5,000.00) will be allocated to
23 Plaintiff as the PAGA service award; and no more than Four Thousand Dollars (\$4,000.00) will
24 be allocated to the claims administrator's costs; and the remaining amount (approximately
25 \$6,675.00) will be provided to the LWDA and the PAGA Group as defined below (*i.e.*, 75% of
26 the remaining amount to the LWDA and 25% of the remaining amount to the PAGA Group.

- 27 1. Any difference between Plaintiff's attorneys' fees and costs, PAGA service award, and
28 administration costs incurred as a result of the Action and the \$6,675.00 ("Net

Settlement Payment”) shall be paid to the PAGA Group and the LWDA in the following manner: 75% to the LWDA, representative of the civil penalties payable back to the LWDA as a result of the PAGA settlement, and 25% to the PAGA Group.

D. PAGA Group and PAGA Group Period.

The scope of the PAGA Group shall include all of Defendant’s employees in California from May 31, 2020 to the date this agreement is fully executed.. The PAGA Group shall not include any persons who have entered into valid settlement releases with Defendant covering the allegations in the PAGA Notice and/or the Lawsuit. The scope of the PAGA Group Period shall be from May 31, 2020 to the date this agreement is fully executed.

E. Release.

For and in consideration of the mutual promises and consideration set forth in this Agreement, Plaintiff and the PAGA Group, on behalf of themselves, and their heirs, successors, assigns, attorneys and agents, hereby release and forever discharge Defendant and each of Defendant’s respective past, present and future parents, subsidiaries, principals and any other person, corporation, association or partnership responsible for the claims made in the PAGA Notice or the Lawsuit, and the past, present, and future shareholders, directors, officers, agents, employees, attorneys, insurers, predecessors, and successors and assigns their right to participate in or bring a claim under the PAGA based on the underlying alleged violations of the Labor Code, including §§ 201-203, 226, 226.3, 226.7, 256, 512, 558, 558.1, 1102.5, 1194, 1197.1, 2802 and 2698 *et seq.* as alleged in the PAGA Notice and/or the Lawsuit.

F. Claims Administrator and Distribution Method.

The Parties agree that Plaintiff’s and Defendant’s counsel will select Phoenix as the Claims Administrator to process and distribute the Settlement Sum in accordance with the Agreement. In addition, and subject to Court approval, timelines and methods related to the administration of this Agreement shall be as follows:

1. The amount of the Settlement Payment available for distribution to the PAGA Group and the LWDA shall be the Settlement Payment less the cost of attorneys’ fees and costs, which are together estimated not to exceed \$9,325.00, the PAGA service award

1 to Plaintiff in the amount of \$5,000, and the claims administrator's costs, which are not
2 to exceed \$4,000. The Net Settlement Payment shall then be allocated 75% to the
3 LWDA ("LWDA Payment") and 25% to the PAGA Group ("PAGA Group Payment").
4 Each member of the PAGA Group will receive a pro rata share of the PAGA Group
5 Payment based on their number of pay periods during the PAGA Group Period
6 compared to the total pay periods of the entire PAGA Group for the same period.
7 Specifically, a Total Value Per Pay Period will be derived by dividing the PAGA Group
8 Payment by the total number of pay periods that all members of the PAGA Group
9 worked within the PAGA Group Period and each PAGA Group member will have their
10 respective number of pay periods multiplied by the Total Value Per Pay Period to
11 derive their respective share of the Net Settlement Payment.

- 12 2. Within three-hundred thirty (330) calendar days of Court approval of this Agreement,
13 Defendant shall deposit the Settlement Payment with the Claims Administrator.
14 Defendant shall also provide a confidential list of all PAGA Group members, their
15 contact information, pay periods and/or dates of employment, and all other necessary
16 information to the Claims Administrator confidentially to locate PAGA Group
17 members, process payments, including but not limited to, social security numbers, and
18 any other information required to effectuate the Agreement.
- 19 3. The Claims Administrator shall mail and distribute to all individuals within the PAGA
20 Group definition a notice of this settlement informing them of the basic information
21 regarding the reason for the payment and the claims waived.
- 22 4. One Hundred Percent (100%) of the PAGA Group Payment will be considered 1099
23 income representing payment for penalties. The Claims Administrator shall be
24 responsible for all tax reporting and documentation related to payment of the PAGA
25 Group Payment.

- 26 a. Defendant makes no representations or warranties with respect to tax
27 consequences of any payment under this Settlement Agreement.
28

- 1 5. The PAGA Group information, and any other data provided by Defendant to the Claims
2 Administrator, shall be treated as confidential and not subject to disclosure by the
3 Claims Administrator except as is otherwise necessary for the Claims Administrator to
4 perform its obligations described in this Agreement. Further, the Claims Administrator
5 shall ensure that the Notice and any other communications to PAGA Group members
6 shall not include the PAGA Group members' Social Security Number, except for the
7 last four (4) digits.
- 8 6. Within fourteen (14) calendar days from the date the Claims Administrator receives the
9 Settlement Payment, the Claims Administrator will perform a National Change of
10 Address check for PAGA Group members' most current address based on the
11 information provided by Defendant and will mail the notice and pro rata shares of the
12 PAGA Group Payment to members of the PAGA Group. For any mailings returned as
13 undeliverable or notifying the Claims Administrator that the PAGA Group member is
14 no longer at the address, the Claims Administrator shall perform a skip-trace on that
15 individual and re-mail the notice and payment to the new address found in the skip-
16 trace. The Claims Administrator will also issue the amount to cover the attorneys' fees
17 and costs to Plaintiff's Counsel's office, will issue the amount to cover the PAGA
18 service award to Plaintiff c/o Plaintiff's counsel's office, and will issue the amount to
19 the LWDA as determined hereto.
- 20 7. PAGA Group members shall have ninety (90) days to cash their respective settlement
21 checks under this Agreement. Any checks not negotiated within the ninety (90) days
22 will be voided and will not be reissued. Any unclaimed funds from the PAGA Group
23 Payment will be provided to the *cy pres* entity the Center for Workers' Rights.

24 G. Applicable Law.

25 This Agreement shall be construed and interpreted in accordance with the laws of the State of
26 California. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
27 jurisdiction solely with respect to the interpretation, implementation, and enforcement of the terms
28

1 of this settlement, and the Parties and their counsel submit to the jurisdiction of the Court for
2 purposes of interpreting, implementing, and enforcing the settlement embodied in this Stipulation
3 of Settlement and all orders and judgments entered in connection therewith. In the case of a dispute
4 regarding the payment of the Settlement Sum or the enforcement of this Agreement, the prevailing
5 party shall be entitled to recover their attorneys' fees and costs. Each Party shall bear his/its own
6 attorneys' fees, if any, related to this Agreement.

7 H. Counterparts.

8 This Agreement may be signed in counterparts. Fax, scan, and/or electronic copies of signatures
9 shall be deemed effective as originals.

10 I. Voluntary Agreement.

11 Plaintiff acknowledges that he has read this Agreement, that he fully understands his rights,
12 privileges and duties under the Agreement, and enters into this Agreement freely and voluntarily.
13 Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain
14 the terms of this Agreement and the consequences of signing this Agreement.

15 J. No Publicity.

16 Neither Plaintiff nor his Counsel shall issue a press release, hold a press conference, or otherwise
17 publicize the settlement other than in documents submitted to the Court.

18 K. Court Approval of the PAGA Payment.

19 Subject to Defendant's review and approval prior to filing, Plaintiff's Counsel shall be responsible
20 for preparing and filing a Motion for Approval of the PAGA Payment with the proposed Judgment
21 ("Motion"). Plaintiff's Counsel will provide Defendant's counsel with an opportunity for review
22 and comments at least five business days before filing the Motion. The Motion shall also be served
23 on the LWDA when filed with the Court. Plaintiff's Counsel shall also submit this Motion with
24 the Agreement to the LWDA at the time the Motion is filed, pursuant to Labor Code Section
25 2699(1)(2).

26 L. Court Approval of the PAGA Settlement.

27 The Settlement Agreement is contingent upon the approval by the Court. If the Court should fail
28 to approve this Settlement Agreement in the form agreed to by the Parties, the Parties agree to

1 coordinate efforts to address the Court's questions or concerns. If after the Parties make at least
2 three (3) good faith efforts, the Court does not approve this Settlement Agreement, or if appellate
3 review is sought and on such review the Court's decision is materially modified or reversed, or if
4 one or more of the terms of the Settlement Agreement are not approved or is materially modified
5 or reversed or found to be invalid and the Parties in good faith do not believe that it would be
6 possible to make non-material modifications that would address any concerns raised by the Court,
7 then each of the Parties by and through Counsel shall have the right within ten (10) days of written
8 notice thereof to elect to terminate the Settlement Agreement, in which event it shall have no force
9 or effect, and the Parties shall be deemed to have reverted to their respective status as of the date
10 and time immediately prior to the execution of this Settlement Agreement.

11 M. Dismissal With Prejudice.

12 Following the complete and final administration of the settlement, Plaintiff's Counsel shall file
13 with the Court a request for dismissal of the Action with prejudice.

14 N. Costs and Fees.

15 The Parties shall each bear their own costs, attorneys' fees, mediator fees, and other fees incurred
16 in connection with this Settlement Agreement and in connection with the Action and Plaintiff's
17 claims, except as otherwise set forth specifically herein.

18 O. Acknowledgment that the Settlement is Fair and Reasonable.

19 The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the
20 Action and have arrived at this Settlement Agreement after arm's-length negotiations by
21 experienced counsel. The Parties further acknowledge that they are each represented by competent
22 counsel and that they have had an opportunity to consult with their counsel regarding the fairness
23 and reasonableness of this Settlement Agreement.

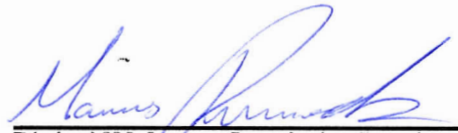
24 P. Severability.

25 If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the
26 remaining portions of this Settlement Agreement will continue to be valid and will be performed,
27 construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable
28 term will be deemed amended and limited in accordance with the intent of the Parties, as

1 determined from the face of the Settlement Agreement, to the extent necessary to permit the
2 maximum enforceability or validation of the term or provision.

3 IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Agreement as of
4 the date set forth below.

5
6 Dated: 12/7/22


Plaintiff Marcos Preciado-Sanchez

7
8
9
10 Dated: 12/28/2022


Defendant Gary's Airbag Service, Inc.
By:

11
12
13
14 APPROVED AS TO FORM ONLY:

15 SAVAGE, LAMB, REIMER & HOOPER

16
17 Dated: December 12, 2022


Angela Hooper
Attorney for Plaintiff
Marcos Preciado-Sanchez

18
19
20
21 WEINTRAUB TOBIN

22
23 Dated: 12/12/2022


Katie Collins
Meagan Bainbridge
Attorneys for Defendant
Gary's Airbag Service, Inc.

EXHIBIT 2

LAW OFFICES OF PATRICIA A. SAVAGE

1550 Humboldt Road, Suite 4
Chico, CA 95928
(530) 809-1851 Office
(530) 592-3865 Fax
psavesq@gmail.com
www.localaborlaw.com

March 23, 2021

For Online Filing

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via Certified Mail

Gary's Airbag Service
209 Kenroy Lane
Roseville, CA 95678

Re: Marcos Preciado v. Gary's Airbag Service

NOTICE

Dear Sir or Madam:

Pursuant to Labor Code § 2699.3 this correspondence shall serve to officially apprise you and the above-named employer regarding the allegations of Marcos Preciado regarding violations of Labor Code Section 226 by Gary's Airbag Service.

Please allow me to set forth the facts and theories to support each of the allegations identified in this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Gary's Airbag Service (hereinafter referred to as "Respondent"). Should you decide not to investigate, we require that you allow us to bring the following action on behalf of Claimant and all similarly situated current and former employees, pursuant to Labor Code Section 2699(a). The similarly situated employees shall include, but are not limited to, the following: all individuals in California who have, or continue to, perform work for Respondent as hourly and misclassified salaried employees. The foregoing violations are based upon the following facts and circumstances.

FACTS:

Mr. Preciado worked for Gary's Airbag Service as a Mobile Technician. Mr. Preciado was misclassified as an exempt employee and paid a set amount of \$1,125.00 per week. Mr. Preciado's position as a Mobile Technician did not authorize or require him to perform administrative, executive, or professional capacity duties. Mr. Preciado regularly worked ten (10) or more hours per month of overtime, for which he received no compensation. Additionally, Mr. Preciado was required to work through meal and rest periods for which he received no premium pay.

As a Mobile Technician for Gary's Airbag Service, Mr. Preciado was required to use his own personal vehicle to travel to job locations and use his personal cell phone for work related purposes. Mr. Preciado was provided a fixed amount of \$300 for gas, even if Mr. Preciado was required to spend above that amount in gas to travel to job locations, and Respondent did not compensate Claimant for mileage or wear and tear on his vehicle. Mr. Preciado received no reimbursement for his personal cell phone expense.

As a result of Gary's Airbag Service failure to compensate Mr. Preciado for all hours worked, failing to provide meal and rest periods or premium pay in lieu thereof, and failing to reimburse Mr. Preciado for business expenses, Mr. Preciado's wage statements during his employment were inaccurate. Gary's Airbag Service also failed to track employees' time and maintain accurate records.

Mr. Preciado's last day of employment with Gary's Airbag Service was March 5, 2021. Gary's Airbag Service failed to pay all wages and monies owed to Mr. Preciado upon the termination of his employment.

ALLEGATIONS AND CHARGES:

1. Failure to Pay Overtime Wages; Violation of Labor Code §§ 510, 1194; IWC Wage Order 4

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in one workweek. Finally, employers must pay employees two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week but were not paid all overtime wages owed. Failure to pay such wages is against the law and Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages.

2. Failure to Pay Minimum Wages; Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. See, IWC Wage Order MW-2019; IWC Wage Order No. 4; Cal. Lab. Code §§ 1194, 1197.1. Plaintiff and Aggrieved Employees were not compensated at all for time worked over eight (8) hours in a day or forty (40) hours in a week, in violation of the law.

3. Failure to Provide Meal Periods or Pay Premium in Lieu Thereof; Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4

Labor Code section 226.7 and Wage Order No. 4 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

4. Failure to Provide Rest Periods or Pay Premium in Lieu Thereof; Violation of Labor Code § 226.7; IWC Wage Order 4

Labor Code section 226.7 and Wage Order No. 4 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law and Defendant further failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

5. Failure to Provide Accurate Wage Statements; Violation of Labor Code §§ 226, 226.3

Labor Code section 226 requires employers to furnish to employees with "an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, ... (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a 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..." For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This was in violation of the law.

6. Failure to Pay Final Wages; Violation of Labor Code §§ 201-203, 256

Labor Code sections 201-203 require that all wages, including minimum wages and overtime wages be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter, as required by Labor Code sections 201-203.

7. Failure to Pay Reimbursement for Expenses; Violation of Labor Code § 2802

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendant failed to pay any reimbursements for cell phone use and failed to fully reimburse employees for the use of personal vehicles to perform their job duties.

8. Provisions Regulating Hours and Days of Work in Industrial Welfare Commission Order; Violation of Labor Code §§ 558, 558.1

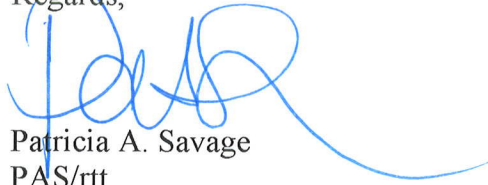
Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant’s agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1, as well as the incorporated Wage Orders and incorporated statutes therein.

9. Failure to Maintain Accurate Records; Violation of Labor Code §§ 226.3, 1174

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees’ wage records and hours worked. This was against the law.

As required, this correspondence has been provided to the employer at the address noted herein. If you have any questions regarding the foregoing, please do not hesitate to contact my office. Otherwise, thank you for your professional courtesy and cooperation in this regard.

Regards,

A handwritten signature in blue ink, appearing to read 'PAS', with a long, sweeping horizontal line extending to the right.

Patricia A. Savage
PAS/rtt

LAW OFFICES OF PATRICIA A. SAVAGE

1550 Humboldt Road, Suite 4
Chico, CA 95928
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(530) 592-3865 Fax
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www.locallaborlaw.com

June 9, 2021

For Online Filing

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via Certified Mail

Gary's Airbag Service
209 Kenroy Lane
Roseville, CA 95678

Via Electronic Correspondence

Christy M. Carlisle, Esq.
The Carlisle Law Firm
212 Judah Street
Roseville, CA 95678
christy@thecarlislelawfirm.com

Re: Marcos Preciado v. Gary's Airbag Service

AMENDED NOTICE **LWDA-CM-826754-21**

Dear Sir or Madam:

As Counsel for Mr. Preciado, I am writing to provide you the following **ADDITIONAL AMENDED** allegations and theories to support said additional allegations.

Pursuant to Labor Code § 2699.3 this correspondence shall serve to officially apprise you and the above-named employer regarding the allegations of Marcos Preciado regarding violations of Labor Code Section 226 by Gary's Airbag Service.

Please allow me to set forth the following facts and theories to support each of the **ADDITIONAL ALLEGATIONS**. The additional **AMENDED** allegations are in bold for easy identification.

Please allow me to set forth the facts and theories to support each of the allegations identified in this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Gary's Airbag Service (hereinafter referred to as "Respondent"). Should you decide not to investigate, we require that you allow us to bring the following action on behalf of Claimant and all similarly situated current and former employees, pursuant to Labor Code Section 2699(a). The similarly situated employees shall include, but are not limited to, the following: all individuals in California who have, or continue to, perform work for Respondent as hourly and misclassified salaried employees. The foregoing violations are based upon the following facts and circumstances.

FACTS:

Mr. Preciado worked for Gary's Airbag Service as a Mobile Technician. Mr. Preciado was misclassified as an exempt employee and paid a set amount of \$1,125.00 per week. Mr. Preciado's position as a Mobile Technician did not authorize or require him to perform administrative, executive, or professional capacity duties. Mr. Preciado regularly worked ten (10) or more hours per month of overtime, for which he received no compensation. Additionally, Mr. Preciado was required to work through meal and rest periods for which he received no premium pay.

As a Mobile Technician for Gary's Airbag Service, Mr. Preciado was required to use his own personal vehicle to travel to job locations and use his personal cell phone for work related purposes. Mr. Preciado was provided a fixed amount of \$300 for gas, even if Mr. Preciado was required to spend above that amount in gas to travel to job locations, and Respondent did not compensate Claimant for mileage or wear and tear on his vehicle. Mr. Preciado received no reimbursement for his personal cell phone expense.

As a result of Gary's Airbag Service failure to compensate Mr. Preciado for all hours worked, failing to provide meal and rest periods or premium pay in lieu thereof, and failing to reimburse Mr. Preciado for business expenses, Mr. Preciado's wage statements during his employment were inaccurate. Gary's Airbag Service also failed to track employees' time and maintain accurate records.

Mr. Preciado's last day of employment with Gary's Airbag Service was March 5, 2021. Gary's Airbag Service failed to pay all wages and monies owed to Mr. Preciado upon the termination of his employment.

ALLEGATIONS AND CHARGES:

1. Failure to Pay Overtime Wages; Violation of Labor Code §§ 510, 1194; IWC Wage Order 4

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½

times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in one workweek. Finally, employers must pay employees two (2) times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week but were not paid all overtime wages owed. Failure to pay such wages is against the law and Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages.

2. Failure to Pay Minimum Wages; Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. See, IWC Wage Order MW-2019; IWC Wage Order No. 4; Cal. Lab. Code §§ 1194, 1197.1. Plaintiff and Aggrieved Employees were not compensated at all for time worked over eight (8) hours in a day or forty (40) hours in a week, in violation of the law.

3. Failure to Provide Meal Periods or Pay Premium in Lieu Thereof; Violation of Labor Code §§ 226.7, 512; IWC Wage Order 4

Labor Code section 226.7 and Wage Order No. 4 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 4, further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

4. Failure to Provide Rest Periods or Pay Premium in Lieu Thereof; Violation of Labor Code § 226.7; IWC Wage Order 4

Labor Code section 226.7 and Wage Order No. 4 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law and Defendant further failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

5. Failure to Provide Accurate Wage Statements; Violation of Labor Code §§ 226, 226.3

Labor Code section 226 requires employers to furnish to employees with "an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the

employee,...(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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a 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..." For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This was in violation of the law.

6. Failure to Pay Final Wages; Violation of Labor Code §§ 201-203, 256

Labor Code sections 201-203 require that all wages, including minimum wages and overtime wages be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter, as required by Labor Code sections 201-203.

7. Failure to Pay Reimbursement for Expenses; Violation of Labor Code § 2802

Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Defendant failed to pay any reimbursements for cell phone use and failed to fully reimburse employees for the use of personal vehicles to perform their job duties.

8. Provisions Regulating Hours and Days of Work in Industrial Welfare Commission Order; Violation of Labor Code §§ 558, 558.1

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant's agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1, as well as the incorporated Wage Orders and incorporated statutes therein.

9. Failure to Maintain Accurate Records; Violation of Labor Code §§ 226.3, 1174

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a

subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

10. Violation of Labor Code §1102.5

Labor Code § 1102.5:

(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

Here, Mr. Preciado complained to Respondent regarding their unlawful employment practices including, but not limited to, failing to provide Claimant with meal or rest breaks, compensate him for overtime, and creating and maintaining a discriminatory and hostile work environment. After Mr. Preciado made these lawful complaints, Respondent did not investigate these allegations, and instead maintained their unlawful employment practices and continued to subject Claimant to a hostile and discriminatory work environment. This treatment by Respondent became unbearable, leaving Claimant with no other option but to resign his employment with Respondent. Claimant provided two-weeks notice to Respondent of his separation of employment; however, Respondent retaliated against Claimant by refusing to pay him all of wages due and owing to Mr. Preciado at the time of his separation of employment. This was in violation of Labor Code § 1102.5.

As required, this correspondence has been provided to the employer at the address noted herein. If you have any questions regarding the foregoing, please do not hesitate to contact my office. Otherwise, thank you for your professional courtesy and cooperation in this regard.

Regards,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Patricia A. Savage
PAS/rtt

Proof of Service

I, Robert Towne, am a citizen of the United States and employed in the County of Butte. I am over the age of eighteen years and not a party to the within action. My business address is 315 Wall Street, Suite 3, Chico, CA 95928. I am readily familiar with the practice of collection and processing of correspondence/documents for mailing with the United States Postal Service and that said correspondence/documents are deposited with the United States Postal Service in the ordinary course of business on the same day.

On January 18, 2023, I served the within:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR APPROVAL OF PRIVATE ATTORNEYS GENERAL ACT

DECLARATION OF ANGELA HOOPER IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA

[PROPOSED] ORDER GRANTING APPROVAL OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA

On the parties below by electronic service based on a court order or an agreement of the parties to accept electronic service. I caused the documents to be sent to the persons at the electronic service addresses listed below:

Meagan Bainbridge, Katie Collins, Ramona Carrillo, and Chrystal Wade

mbainbridge@weintraub.com

kcollins@weintraub.com

rcarrillo@weintraub.com

cwade@weintraub.com

The above documents were further submitted via online submission pursuant to Labor Code Section 2699(1)(2) to:

California Labor Workforce Development Agency

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California and that this declaration was executed at Chico, California.

Robert Towne