

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

Nazo Koulloukian, SBN 263809

nazo@koullaw.com

KOUL LAW FIRM

3435 Wilshire Blvd., Suite 1710

Los Angeles, CA 90010

Telephone: (213) 761-5484

Facsimile: (818) 561-3938

Attorneys for Plaintiff,
JOSE TAPIA, on behalf of
themselves, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

LOS ANGELES COUNTY

JOSE TAPIA, on behalf of himself, all) Case No.: **21STCV25588**

aggrieved employees, and the State of CA as a)

Private Attorneys General,)

) **REPRESENTATIVE ACTION**

Plaintiffs,)

vs.)

) **Violation of the Private Attorneys General**

C& T LOGISTICS LLC., a California Limited) **Act of 2004, Cal. Labor Code §2698 et seq.**

Liability Company, and DOES 1-50, inclusive,)

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Defendants.)

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

NATURE OF THE ACTION

1. Plaintiff JOSE TAPIA worked for defendant C&T LOGISTICS LLC, and Does 1-50 (collectively “Defendants”) until June of 2020. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendants within one year of serving notice on the LWDA to the present are aggrieved employees.

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

3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours worked, including overtime hours worked; (2) failing to provide compliant off-duty first and second meal breaks; (3) failing to provide adequate rest breaks; (4) failing to reimburse for required business expenses; (5) failing to provide safe working conditions; (6) failing to timely pay all wages owed; and (7) failing to provide accurate wage statements and maintain accurate payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

7. Plaintiff JOSE TAPIA is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants until June 1, 2020.

8. Defendant C& T LOGISTICS LLC. is a Limited Liability Company doing business in California with the capacity to sue and to be sued and doing business, in Los Angeles County, State of California.

9. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is

1 informed and believes and thereon alleges that said Defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
3 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

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

11 **JURISDICTION AND VENUE**

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

15 12. The statutory penalties sought by Plaintiff exceeds the minimum jurisdictional limits
16 of the Superior Court and will be established according to proof at trial. Based on information,
17 investigation, and analysis, Plaintiff alleges that the amount in controversy, including claims for
18 monetary damages, penalties, and attorney's fees, is more than twenty-five thousand dollars
19 (\$25,000).

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

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 14. During the relevant period, Defendants committed various violations of the California
26 Labor Code as alleged below in more detail. Defendants enforce multiple policies that violate state
27 law, which is intended to increase profits to the detriment of aggrieved employees.

28 15. Defendant C&T LOGISTICS LLC operates a shipping and parcel delivery business
where Plaintiff worked as a Delivery Driver. Defendants employed Plaintiff and over 100 current
and former aggrieved employees.

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

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

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

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

10 (Cal. Labor Code §§218, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*)

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

13 20. Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an
14 employee is subject to the control of an employer, and including all the time the employee is
15 suffered or permitted to work, whether or not required to do so.” Plaintiff and aggrieved employees
16 were not paid for all hours worked, including overtime hours worked because of Defendants’
17 policy of requiring the Employees to arrive at the Employer’s parking lot to obtain their
18 instructions for the day, be bussed onto the work facility and then given keys to their work vehicle.
19 Employees were required to arrive early to await instructions. Plaintiff and aggrieved employees
20 were also required to work during unpaid meal and rest periods.

21 21. This resulted in many unpaid hours worked for all aggrieved employees required to
22 communicate regarding work matters with their employer while off the clock. Defendants violated
23 Labor Code §§510 1194, and 1198, and Wage Order 9. Defendants are liable for civil penalties
24 pursuant to Labor Code §§558 and 2698 *et seq.*

25 22. Failure to Pay Wages- Required Minimum Wage. Defendants failed to pay Plaintiff
26 and aggrieved employees for all hours worked as a result of Defendants’ pre-shift work practices.
27 Plaintiffs further miscalculated the regular rate for purposes of calculating overtime, as discussed
28 below. Based on Defendants’ unlawful conduct described above, and because Plaintiff and the
aggrieved employees were paid at or near minimum wage, Defendants’ failure to pay for all hours
worked, including overtime, resulted in a payment of less than the minimum wage for all hours

1 worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001 4(B). Defendants
2 are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

3 23. Failure to Pay Overtime Wages. Defendants have required, as a result of the practices
4 alleged herein, Plaintiff and others to work hours in excess of eight hours in a day and forty in a
5 week, but has not paid these employees overtime compensation at one and one-half times the
6 regular rate of pay in violation of Labor Code §510. Further, Plaintiff and aggrieved employees
7 have been required to work more than 12 hours in one day without being compensated at a rate of
8 twice the regular rate of pay. §510. As a result, Plaintiff and aggrieved employees have been denied
9 “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor
10 Code. §1194. Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2699 *et*
seq.

11 **Failure to Provide Timely & Compliant Meal Breaks**

12 (Civil Penalties under Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*)

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

15 25. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
16 period of more than five hours per day without providing the employee with a meal period of not
17 less than 30 minutes...An employer shall not employ an employee for a work period of more than
18 10 hours per day without providing the employee with a second meal period of not less than 30
minutes.”

19 26. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
20 during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”
21 Wage Order 9 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a
22 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
23 as time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee
24 for longer hours than those fixed by the wage order or under conditions of labor prohibited by the
order.

25 27. Plaintiff and aggrieved employees did not receive compliant first or second meal
26 periods because employees were required to constantly deliver packages and were given an excess
27 of packages to deliver each day. Claimant and aggrieved employees could not deliver all required
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1 packages in the allotted time and still take meal and rest breaks. Accordingly, meal breaks were
2 almost always missed, short, and/or interrupted.

3 28. Additionally, meal and rest breaks were not compliant because Employer failed to
4 provide a bathroom for their use. Employees were required to be out delivering packages all day.
5 Employees were not allowed to go back to the workplace to use the restroom or otherwise vary
6 from their delivery route. During coronavirus, restaurants and facilities that Plaintiff and aggrieved
7 employees would use no longer allowed use of their restrooms, even to customers. As a result,
8 there was absolutely nowhere for employees to use the restroom and employees had to find ways
9 to cope. Plaintiff, for example, would not eat or drink all day so that he would not need to use the
10 restroom.

11 29. Defendants failed to permit Plaintiff and aggrieved employees to take timely, off-
12 duty, first and second meal breaks of “not less than 30 minutes” for each five consecutive hours
13 of work in violation of Labor Code §§226.7 and 512. Although meals were routinely late,
14 interrupted or non-existent and always noncompliant, Defendants never paid penalty pay to
15 Plaintiff and others. As a derivative claim, Plaintiff alleges that her pay statements were
16 inaccurate, failing to include required meal period penalties, thus failing the requirements of
17 Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties
18 pursuant to Cal. Labor Code §§558 and 2698 *et. seq.*

19 30. Plaintiff alleges on information and belief that that Defendants’ failure to pay
20 aggrieved employees the unpaid balance of these meal period wages upon the termination of
21 their employment, as alleged in this cause of action, was willful, and thus entitles aggrieved
22 employees to penalties under Labor Code §203. Specifically, Labor Code §203 provides that an
23 employee's wages shall continue as a penalty until paid or for a period of up to 30 days from the
24 time they were due, whichever period is shorter.

25 31. Plaintiff seeks penalties pursuant to Labor Code §558 in this representative action for
26 each violation of Labor Code §226.7. Further, as a derivative claim for failing to pay the
27 premium pay of one (1) hour of pay at the employee’s regular rate of compensation for each
28 workday that the meal period is not provided, Plaintiff will seek statutory penalties under Labor
Code §226(a)(1) because the failure to pay such premium wages rendered gross pay calculations
inaccurate in violation of Labor Code §226(e)(2)(B)(i).

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Failure to Provide Compliant Rest Breaks

(Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*)

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

33. Defendants have failed to maintain a policy and practice that provides or permits its employees with off-duty rest periods as required by California law. Plaintiff and aggrieved employees regularly worked in excess of four hours, or a major fraction thereof, during work days without being provided any rest break, despite the fact that employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §§226.7, 512 and Wage Order 9.

34. Claimant and aggrieved employees were unable to take compliant rest periods for the same reasons they were unable to take compliant meal periods. First, they were overworked and overtasked, unable to fulfill the demands of the job and take any sort of break. Second, there were no restroom facilities provided and restroom facilities were not available since the onset of COVID-19.

35. Defendants failed to pay Plaintiff and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code § 226.7(b) for those noncompliant rest periods. Rest period violations occurred daily, however, no rest period penalty pay is listed on the Plaintiff's paystubs. Pursuant to Labor Code §1198, "the employment of any employee . . . under conditions of labor prohibited by the order is unlawful." Accordingly, because Defendants violated Wage Order provisions requiring rest breaks, Defendants violated §1198. As a result of these violations, Defendants are liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.* As a derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Lab. Code §§558 and 2968 *et seq.*

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Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

1 37. Labor Code §2802 requires employers to indemnify employees for necessary
2 expenditures or losses incurred by employees in direct consequence of the discharge of duties.

3 38. Claimant and aggrieved employees were required to use their personal cell phones for
4 work purposes. For example, they were required to download Amazon's "Mentor" app which
5 was required to track their driving. Claimant and aggrieved employees also used their personal
6 cell phones to clock in and out.

7 39. Claimant and aggrieved employees were also forced to bring their own PPE and
8 sanitation supplies because Employer did not provide enough masks, cleaning supplies and
9 sanitizers to protect them against COVID-19, as discussed further below. Finally, Claimant and
10 aggrieved employees used their own personal cars at the end of their shifts to drive from the
11 parking lot where they leave the delivery van to the office where they return the keys. Employees
12 are not paid mileage or any other expenses for this.

13 40. Defendant required Plaintiff and employees to utilize their personal cell phones for
14 work purposes, as well as provide their own masks and sanitization supplies but failed to reimburse
15 Plaintiff and employees for this use as required by the Labor Code. As a result of these practices,
16 Defendants are liable for civil penalties under Cal. Lab. Code §2698 *et seq.* Plaintiff also seeks
17 attorneys' fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

18 **Failure to Provide Safe Working Conditions**

19 (Cal. Labor Code §6400, 6401, 6401.7, 6402, 6403, §2698 *et. seq.*)

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

22 42. Employer failed to take safety measures required to keep employees safe during
23 COVID-19. Employer is liable for civil penalties pursuant to §2698 *et. seq.* Employers are liable
24 for violating Labor Code § 6400 when they fail to provide place of employment that is safe and
25 healthful. §6401 is violated when employers fail to furnish and use safety devices and
26 safeguards, and adopt and use practices, means, methods, operations, and processes which are
27 reasonably adequate to render such employment and place of employment safe and healthful.
28 §6401.7 is violated where an employer fails to implement and maintain an effective written
injury prevention program, including as relevant to contracting the COVID-19 virus. §6402
prohibits requiring or permitting employee to go or be in employment or place of employment

1 that is not safe and healthful. § 6403 holds employers liable for failure or neglect to provide and
2 use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate
3 methods and processes, or to do every other thing reasonably necessary to protect the life, safety
4 and health of employees.

5 43. Employer violated all the above Labor Code sections by failing to conduct
6 temperature checks at the facility. Although Amazon requires their delivery companies to
7 conduct temperature checks, Employer would instead tell the employees to report that they had
8 their temperatures checked to Amazon using the required apps. Not only did Employer fail to
9 comply with Amazon's temperature check requirements, but they failed to prepare and
10 implement their own written injury prevention program as related to COVID-19.

11 44. Additionally, when employees would gather at the beginning of the shift to receive
12 their daily assignments, Employer did not enforce social distancing or proper mask wearing.
13 Employees often stood within six feet and often wore masks incorrectly, such as under their
14 noses. Employer provided masks that did not fit well and would frequently slip down, so
15 Claimant and aggrieved employees bought their own. Employer did not provide face shields and
16 did not provide enough sanitization products to allow employees to properly clean and sanitize
17 the vans. As stated above, there was no clean bathroom provided during the shift. The only
18 bathroom was a dirty porta potty in the parking lot, and it was only available when the
19 employees were coming on and off shift. Additionally, there were no handwashing facilities
20 and insufficient sanitizer provided at the parking lot where all employees began their shifts.
21 Plaintiff and aggrieved employees were exposed to a high risk of being exposed to illness and
22 jeopardizing their life, safety, and health. As a result of these practices, Employers have
23 violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to
24 provide a safe and healthful environment for their Employees, as outlined above.
25 Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

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

27 (Cal. Labor Code §§201, 202, 203, 558, and 2698 *et seq.*)

28 45. Defendants knowingly and willfully failed to pay all compensation due and owing to
Plaintiff and aggrieved employees at the time employment terminated. Defendants willfully failed
to pay employees who are no longer employed by it all compensation due upon termination of
employment as required by Cal. Lab. Code §§201 and 202.

1 46. Plaintiff believes that other employees who separated from the company, whether
2 voluntary or involuntary, were also denied payment of wages in a timely manner as required by
3 §203. Plaintiff seeks civil penalties pursuant to §558 (a)(3) for each violation of §203 and civil
4 penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and
Development Agency (LWDA).

5 47. Pursuant to §§203, Plaintiff and similarly situated individuals are now also entitled to
6 recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the
7 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
8 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
9 § 2698 *et. seq.*

10 48. Defendants were required to pay Plaintiff and employee all wages earned twice during
11 each calendar month pursuant to Labor Code §204(a). Defendants failed to pay all wages earned
12 to employees as a result of the unlawful employment policies and practices discussed herein. As a
13 result of these practices, aggrieved employees were underpaid for hours worked, including
14 overtime wages, and this underpayment resulted in a failure to pay all wages owed twice per
month.

15 **Civil Penalties For Failure to Furnish and Maintain Accurate Payroll Records**

16 (Civil Penalties under Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

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

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

27 51. Labor Code § 1174 provides that "[e]very employer employing labor in this state shall
28 ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages

1 of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at
2 which employees are employed, payroll records showing the hours worked daily by and the wages
3 paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
4 employees employed at the respective plants or establishments. These records shall be kept in
5 accordance with rules established for this purpose by the commission, but in any case shall be kept
6 on file for not less than two years.”

7 52. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
8 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
9 and 1174. Derivative of the claims alleged above, the statements provided to Plaintiff and
10 aggrieved employees have not accurately reflected actual gross wages earned, including overtime,
11 phone reimbursement, and total hour worked. Such failures caused injury to Plaintiff and aggrieved
12 employees, by, among other things, impeding them from knowing the total hours worked and the
13 amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they
14 were entitled to.

15 53. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of Section
16 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
17 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
18 each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
20 The civil penalties provided for in this section are in addition to any other penalty provided by
21 law.”

22 54. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

23 55. Plaintiff alleges on information and belief that Defendants knowingly and intentionally
24 failed to furnish aggrieved employees with accurate itemized statements for each pay period that
25 they worked and failed to maintain accurate payroll records of the aggrieved employees as
26 mandated by Labor Code §§ 226.

27 56. Defendants failed to timely furnish final wages upon separation as required under
28 Labor Code §201-202, resulting in waiting time penalties when final wages were ultimately paid.
As a result, Defendants issued inaccurate final wage statements to aggrieved employees.

57. Through this representative action, Plaintiff will advance the interests of hundreds of
current and former employees, such that joinder is impracticable. These current and former

employees can be readily be identified through a review of Defendants' payroll records and the records of the company that handles payroll for Defendants.

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

FIRST CAUSE OF ACTION

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

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

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

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

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

- a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*;
- b. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*);
- c. Failure to Provide Adequate Rest Breaks (Cal. Labor Code §§226(a), 226.7, 512, 558, 1198, 2698 *et seq.*);
- d. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)
- e. Failure to Provide Safe Working Conditions (Cal. Labor Code §6400, 6401, 6401.7, 6402, 6403, §2698 *et. seq.*)

1 f. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a),
2 2698 *et seq.*);

3 g. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
4 Records (Cal. Labor Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

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

9 64. With respect to violations of Labor Code §510, Labor Code §558 imposes a civil
10 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
11 for each underpaid employee for each pay period for which the employee was underpaid, and one
12 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
13 for which the employee was underpaid. Plaintiff only seeks penalties under §558 and does not seek
14 underpaid wages under §558, which are not available in PAGA actions.

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

19 66. Plaintiff and the other current and former employees of Defendants are aggrieved
20 employees. They were or are employed by Defendants, and each of them, and the violations alleged
21 herein were committed against them. Plaintiff brings this action on behalf of themselves and all other
22 current and former aggrieved employees.

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

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

27 69. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
28 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice within

1 the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to
2 Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of
3 aggrieved employees and the State of California.

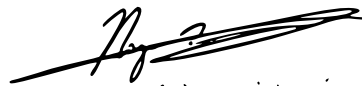
4 **PRAYER FOR RELIEF**

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

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

15 DATED: July 12, 2021

16 **KOUL LAW FIRM**

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19 BY: Nazo Koulloukian, Esq.
20 Attorneys for Plaintiff JOSE TAPIA, and all
21 aggrieved employees
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EXHIBIT A



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

April 20, 2021

Via E-filing:

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

Via Certified U.S. Mail:

C&T Logistics LLC.
9350 Rayo Ave
South Gate, CA 90280

C&T Logistics LLC.
510 Pine Ave #312
Long Beach, CA 90802

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Jose Tapia
Employer: C&T Logistics LLC.

Dear Sir or Madam:

Jose Tapia (hereafter “Claimant”) has retained Nazo Koulloukian, Esq. to represent him, and all other aggrieved employees, for wage and hour claims against his employer C&T Logistics LLC., hereafter “Employer.”

Employer is a freight shipping and trucking company running freight hauling business from South Gate, California. Employer’s services include dedicated transportation, transportation solutions, and logistics management. Claimant worked for employer as a Delivery Associate until June 1, 2020, earning minimum wage.

Wage theft at Amazon’s partner delivery companies is becoming endemic, as evidenced by the recent Labor Commissioner Ruling regarding Green Messengers, Inc. and Amazon.com Services LLC. (*California Labor Commissioner Cites Delivery Companies More Than \$6 Million for Wage Theft Violations*, <https://www.dir.ca.gov/DIRNews/2021/2021-27.html>).

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 9)

Section 2(H) of Wage Order 9 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

Claimant and aggrieved employees worked primarily as delivery drivers for Employer. At the beginning of their shifts, they were required to arrive at the Employer’s parking lot to obtain their instructions for the day and keys to the work vehicle. Employees were required to arrive early to await instructions. Claimant and aggrieved employees were also required to work during unpaid meal periods. Employees were given an excessive number of packages to deliver each day, and the unreasonable delivery expectations placed on Claimant and aggrieved employees served as a basis for many of the wage and hour violations described herein.

Claimant and aggrieved employees were not paid for all time worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 9. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Provide Timely, Uninterrupted Meal Breaks and Second Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*, Wage Order 9)

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all its hourly employees with their right to take all required timely, off-duty, unpaid 30-minute meal periods. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

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

Claimant and aggrieved employees did not receive compliant first or second meal periods because employees were required to constantly deliver packages and were given an excess of packages to deliver each day. Claimant and aggrieved employees could not deliver all required packages in the allotted time and still take meal and rest breaks. Accordingly, meal breaks were almost always missed, short, and/or interrupted.

Additionally, meal and rest breaks were not compliant because Employer failed to provide a bathroom for their use. Employees were required to be out delivering packages all day. Employees were not allowed to go back to the workplace to use the restroom or otherwise vary from their delivery route. During coronavirus, restaurants and facilities that Claimant and aggrieved employees would use no longer allowed use of their restrooms, even to customers. As a result, there was absolutely nowhere for employees to use the restroom and employees had to find ways to cope. Claimant, for example, would not eat or drink all day so that he would not need to use the restroom.

Employer failed to assure Claimant and others take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7, 512, and 1198. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq. Wage Order 9.)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by Cal. Lab. Code §226.7, §512 and Wage Order 9.

Claimant and aggrieved employees were unable to take compliant rest periods for the same reasons they were unable to take compliant meal periods. First, they were overworked and overtasked, unable to fulfill the demands of the job and take any sort of break. Second, there were no restroom facilities provided and restroom facilities were not available since the onset of COVID-19.

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

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 et seq.)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties.

Claimant and aggrieved employees were required to use their personal cell phones for work purposes. For example, they were required to download Amazon's "Mentor" app which was required to track their driving. Claimant and aggrieved employees also used their personal cell phones to clock in and out.

Claimant and aggrieved employees were also forced to bring their own PPE and sanitation supplies because Employer did not provide enough masks, cleaning supplies and sanitizers to protect them against COVID-19, as discussed further below. Finally, Claimant and aggrieved employees used their own personal cars at the end of their shifts to drive from the parking lot where they leave the delivery van to the office where they return the keys. Employees are not paid mileage or any other expenses for this.

Employer required Claimant and employees to provide their own masks and sanitization supplies, and to utilize their personal cell phones and cars for work purposes but failed to reimburse Claimant and employees for this use as required by the Labor Code. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §6400, 6401, 6401.7, 6402, 6403, §2698 *et. seq.*)

Employer failed to take safety measures required to keep employees safe during COVID-19. Employer is liable for civil penalties pursuant to §2698 *et. seq.* Employers are liable for violating Labor Code § 6400 when they fail to provide place of employment that is safe and healthful. §6401 is violated when employers fail to furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. §6401.7 is violated where an employer fails to implement and maintain an effective written injury prevention program, including as relevant to contracting the COVID-19 virus. §6402 prohibits requiring or permitting employee to go or be in employment or place of employment that is not safe and healthful. § 6403 holds employers liable for failure or neglect to provide and use reasonably adequate safety devices and safeguards or adopt or use reasonably adequate methods and processes, or to do every other thing reasonably necessary to protect the life, safety and health of employees.

Employer violated all the above Labor Code sections by failing to conduct temperature checks at the facility. Although Amazon requires their delivery companies to conduct temperature checks, Employer would instead tell the employees to report that they had their temperatures checked to Amazon using the required apps. Not only did Employer fail to comply with Amazon's temperature check requirements, but they failed to prepare and implement their own written injury prevention program as related to COVID-19.

Additionally, when employees would gather at the beginning of the shift to receive their daily assignments, Employer did not enforce social distancing or proper mask wearing. Employees often stood within six feet and often wore masks incorrectly, such as under their noses. Employer provided masks that did not fit well and would frequently slip down, so Claimant and aggrieved employees bought their own. Employer did not provide face shields and did not provide enough sanitization products to allow employees to properly clean and sanitize the vans. As stated above, there was no clean bathroom provided during the shift. The only bathroom was a dirty porta potty in the parking lot, and it was only available when the employees were coming on and off shift. Additionally, there were no handwashing facilities and insufficient sanitizer provided at the parking lot where all employees began their shifts.

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 204, 210, 1199 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant and aggrieved employees at the time employment terminated. Employer willfully failed to pay Claimant and aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203. Claimant will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month resulting in liability under Labor Code §210 for violation of §204. Accordingly, Employers are liable for civil penalties under PAGA §2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records

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

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

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

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

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

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

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA’s provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant