

OCT 21 2021

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Alfonso Guzman, on behalf of
themselves, all aggrieved employees, and the State
of California as a Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
SAN BERNADINO COUNTY**

Alfonso Guzman, an individual, on behalf of
themselves, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiffs,

vs.

States Logistics Services, Inc., a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No.: **CIV SB 2130246**

REPRESENTATIVE ACTION

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

1 Plaintiff Alfonso Guzman brings this PAGA representative action complaint on behalf of
2 themselves, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff Alfonso Guzman worked for defendant States Logistics Services, Inc., a
6 California Corporation, and Does 1-50 (collectively “Defendants”) until January of 2021. Plaintiff
7 brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor
8 Code §2698 *et seq.*, on a representative basis. All current and former employees of Defendants
9 within one year of serving notice on the LWDA to the present are aggrieved employees.

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

19 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all
20 hours worked, including overtime hours worked; (2) failing to reimburse for required business
21 expenses; (3) failing to provide safe working conditions; (4) failing to provide rest and cool
22 down breaks; (5) failing to provide place of employment that is safe and healthful; (6) failing to
23 pay all wages owed; and (7) failing to provide accurate wage statements and maintain accurate
24 payroll records. Defendants are therefore liable for civil penalties under the Cal. Labor Code,
25 including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described
26 more fully herein.

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THE PARTIES

4. Plaintiff Alfonso Guzman is a resident of the State of California and was employed as an hourly, nonexempt employee of Defendants until January of 2021.

5. Defendant States Logistics Services, Inc., is a California Corporation doing business in California with the capacity to sue and to be sued and doing business, in San Bernadino County, State of California.

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

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

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JURISDICTION AND VENUE

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

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

10. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, and Defendants are incorporated in and/or qualified to do business in California and

regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

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

12. Plaintiff is an aggrieved employee of Defendants, having worked for Defendants as a loader and picker from March 2020 until January of 2021.

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

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

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

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

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

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

17. Section 2(H) or Wage Order 9 “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.”

18. Plaintiff and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Defendants’ policy of conducting required work activities off the clock and because employees were forced to wait in long lines in order to clock in for work. Defendants also failed to reimburse employees for required personal cell phone and automobile use.

1 19. Defendants have been engaged in many unlawful employment practices which resulted in
2 underpayment for hours worked each pay period, including overtime hours worked, as more fully
3 set forth below:

4 20. Pre-Shift Work and Off-the-Clock Required Duties. Plaintiff and aggrieved employees
5 frequently worked off the clock and were routinely subjected to periods wherein they were under
6 the employer's control but not compensated for their time.

7 21. At the beginning of the shift, when Plaintiff and aggrieved employees arrived at work, they
8 are required to engage in temperature checks prior to clocking in. This process takes 3-5 minutes
9 daily. In addition, Plaintiff and aggrieved employees had to wait in line in order to clock in, which
10 took 1-2 minutes every work shift. Plaintiff and aggrieved employees were not paid for time spent
11 getting temperature checks done or waiting in line off the clock.

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

16 23. Failure to Pay Wages- Required Minimum Wage. Defendant failed to pay Plaintiff and
17 aggrieved employees for all hours worked as a result of Defendant's timecard rounding and time
18 shaving practices, as well as Defendant's practice of requiring employees to communicate via
19 phone and text with Employers while employees were off the clock. Based on Defendant's
20 unlawful conduct described above, and because Plaintiff and the aggrieved employees were paid
21 at or near minimum wage, Defendant's failure to pay for all hours worked, including overtime,
22 resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor
23 Code §1197, 1197.1, 1199 and Wage Order 9-2001. Defendants are liable for civil penalties
24 pursuant to Labor Code §§558 and 2699 *et seq.*

25 24. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked 10-12
26 hours per shift, and sometimes more wherein they were under the Employer's control but not
27 compensated for all of their time. Plaintiff and aggrieved employees were not paid for all time
28 worked, resulting in failure to pay wages, including overtime and minimum wages. Defendants

1 have violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 9. Defendants
2 are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

3 25. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
4 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
5 Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
6 unlawful employment policies and practices discussed herein. As a result of these practices,
7 employees were underpaid for hours worked, including overtime and penalty wages, and this
8 underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure,
9 Defendants are liable under Labor Code §210 for failure to pay wages as required by law.

10 **Failure to Reimburse for Required Business Expenses**

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

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

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

16 28. Plaintiff and aggrieved employees would use their cell phones as a calculator for necessary
17 work duties. Calculators were not made available to them even though they were needed. Plaintiff
18 and aggrieved employees had no choice but to use their cell phones during work for work related
19 activities. In addition, from time-to-time Plaintiff and aggrieved employees would be required to
20 travel from worksite to worksite during one shift. In order to do this, they were forced to use their
21 own means of transportation to get from one site to another. Plaintiff and aggrieved employees
22 were not compensated for the use of their personal means of transportation that was used for work
23 purposes. Also, Defendants did not provide mandatory masks for Plaintiff and aggrieved
24 employees to wear during work. Plaintiff and aggrieved employees were expected to provide their
25 own masks and were only compensated \$10 for doing so. \$10 was not adequate to cover the costs
26 of Plaintiff providing his own masks, which were mandatory in the workplace. Plaintiff and
27 aggrieved employees were forced to use their cell phones and their personal means of
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1 transportation for work purposes and they were forced to provide their own masks to wear at work,
2 but Defendants failed to adequately reimburse Plaintiff and employees for this use as required by
3 the Labor Code. Accordingly, Defendants are liable for civil penalties under PAGA §2699 *et seq.*

4 **Failure to Provide Safe Working Conditions**

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

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

8 30. Defendants' workplaces would get unsafely hot in the summer and extremely cold in
9 the winter. In many instances, Plaintiff and aggrieved employees are required to work in enclosed
10 spaces where there is inadequate heating, cooling and ventilation.

11 31. Defendants do not have proper climate control. Plaintiff and their coworkers worked
12 in unbearable heat and humidity in the summer, and extreme cold during the winter.

13 32. Wage Order 9 ¶15 requires:

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

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

20 33. In addition to climate control issues, Defendants failed to take safety measures required
21 to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ
22 employee in conditions prohibited by the wage order. By violating the wage order, Defendants are
23 liable for civil penalties pursuant to §2698 *et seq.*

24 **Failure to Provide Rest Periods and Cool-Down Rest Periods**

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

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

28 35. When rest breaks were taken, they were not compliant with California law. Employees,
including Plaintiff, who worked in the warehouses were not provided with sufficient potable water

1 or bathrooms or opportunities for cool down periods. Labor Code §226.7 requires that employers
2 provide rest periods and cool down rest periods that comply with state laws, including those that
3 require adequate restroom facilities and water to employees for use during required break and cool-
4 down rest periods.

5 36. Defendants frowned upon and discouraged Plaintiff and aggrieved employees requests for
6 cool down periods. During times when it became dangerously hot in the work areas and Plaintiff
7 and aggrieved employees asked for a period of time to cool down, Defendants ignored their pleas
8 for rest and cooling time and instead asked them to not take their requested time to recover because
9 there was too much work to get done. When employees did receive rest breaks, they were not
10 compliant for many reasons, including those set forth below.

11 37. Potable Drinking Water. Rest breaks did not comply with state laws as required by Labor
12 Code §226.7 because employee were denied sufficient potable water. Labor Code §2441 requires
13 employers to provide fresh, free, and pure drinking water for employees, at reasonable and
14 convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water
15 meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to
16 the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.”⁸
17 CCR § 3457(c) further requires the provision of potable drinking water and single use cups.
18 Plaintiff and aggrieved employees were not provided with adequate potable drinking water, as it
19 was delivered on pallets and sat in the warehouse becoming unreasonably hot and unpotable due
20 to scorching temperatures reached inside.

21 38. Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of
22 not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for
23 not more than 30 days, or by both the fine and imprisonment.”

24 39. Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties
25 for violation of 226.7.

26 40. Legally Compliant Bathrooms. Rest breaks did not comply with state laws as required by
27 Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient
28 handwashing facilities and Plaintiff and aggrieved employees had to deal with a lack of soap being

1 available much of the time, to all those needing to sanitize their hands after using the restroom or
2 simply to keep safe from COVID and other illnesses.

3 41. California Labor Code §2350 requires employers to provides that “[e]very factory,
4 workshop, mercantile or other establishment in which one or more persons are employed, shall be
5 kept clean and free from the effluvia arising from any drain or other nuisance, and shall be
6 provided, within reasonable access, with a sufficient number of toilet facilities for the use of the
7 employees.” Defendant violated §2350 by failing to provide and maintain sanitary bathrooms for
8 employees. Defendant further violated 8 CCR §3457(c) by failing to provide adequate toilet and
9 handwashing facilities.

10 42. Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times,
11 operational, maintained in a clean and sanitary condition, and kept in good repair. Written records
12 of service and maintenance shall be maintained and retained for two years.” Labor Code §6712
13 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair
14 at all times, including written records of that service and maintenance.” Moreover, “any employer
15 who fails to provide the facilities required by the field sanitation standard shall be assessed a civil
16 penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code
17 §6712. Further, the public policy of the State of California as codified, expressed and mandated in
18 Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps
19 to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were
20 filthy, unsanitary, and non-compliant with minimum standards.

21 43. Defendant failed to pay Plaintiff and similarly situated employees the premium
22 compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest
23 periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period
24 violations occurred daily, however no rest period penalty pay is listed on the above paystub.
25 Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor
26 prohibited by the order is unlawful.” Accordingly, because Defendant violated Wage Order
27 provisions requiring rest breaks, Defendant violated §1198. As a result of these violations,
28 Defendants are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a

1 derivative claim, Plaintiff alleges that her pay statements were inaccurate, failing to include
2 required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in
3 further liability under Cal. Labor Code §§ 558 and 2698 et. seq.

4 **Failure to Provide Place of Employment That Is Safe And Healthful**

5 (Cal. Labor Code §6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

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

8 45. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a
9 place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401
10 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt
11 and use practices, means, methods, operations, and processes which are reasonably adequate to
12 render such employment and place of employment safe and healthful. Every employer. Pursuant
13 to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any
14 employment or place of employment which is not safe and healthful. Cal. Labor Code §6403
15 states that no employer shall fail or neglect to provide and use safety devices and safeguards
16 reasonably adequate to render the employment and place of employment safe, or to adopt and use
17 methods and processes reasonably adequate to render the employment and place of employment
18 safe, or to do every other thing reasonably necessary to protect the life, safety, and health of
19 employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place
20 of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer
21 and every employee shall comply with occupational safety and health standards, with Section
22 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this
23 division which are applicable to his own actions and conduct.

24 46. Defendant failed to take precautions to ensure employee safety after the onset of COVID.
25 Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2
26 (SARS-CoV-2). Plaintiff and aggrieved employees, directly after the onset of COVID were
27 required to partake in tool assignments to eliminate possible cross contamination of work items,
28 but those activities were not enforced or practiced quickly after the onset of COVID and when
COVID was still a health risk to the employees. Plaintiff and aggrieved employees constantly had
their assigned work tools taken from them and used by others, causing cross contamination

1 throughout the workplace, yet Defendants did nothing to maintain compliance of the tool
2 assignment policy. Plaintiff did contract COVID at work due to such cross contamination and
3 Defendants' lack of managing compliance of COVID safety precautions. Ultimately, the tools and
4 machinery were not adequately sanitized by Defendants. In addition, Defendants did not provide
5 masks for Plaintiff and aggrieved employees to wear in the workplace and failed to adequately
6 reimburse them for providing their own masks. Also, Defendants oftentimes failed to provide soap
7 in the restrooms so that Plaintiff and aggrieved employees could adequately sanitize their hands
8 before going back to work and using work tools that were then passed around and shared. As a
9 result of these practices, Defendants have violated Cal. Labor Code §§6400, 6401, 6402, 6403,
10 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as
outlined above. Defendants are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

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

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

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

15 48. Failure to Pay Wages Due Upon Termination. As set forth above, due to Defendants'
16 unlawful employment practices, Defendants knowingly and willfully failed to pay all
17 compensation due and owing to Plaintiff at the time employment terminated. Defendant willfully
18 failed to pay aggrieved employees who are no longer employed by it all compensation due upon
19 of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Plaintiff and
20 similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due
21 to Defendants' "willful" failure to comply with the statutory requirements of §§201 and 202 of the
22 Labor Code. Moreover, because Defendants violated §§201, 202 and 203, Defendants are liable
23 for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

24 49. Plaintiff believes that other employees who separated from the company, whether voluntary
25 or involuntary, were also denied payment of wages in a timely manner as required by §203.
26 Plaintiff will seek restitution pursuant to §558 (a)(3) for herself and other aggrieved employees for
27 each violation of §203 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on
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1 behalf of the Labor and Workforce and Development Agency (LWDA) against Defendants if
2 authorized to file a representative action on behalf of the State of California.

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4 **Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records**

5 (Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq*)

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

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

17 52. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage
18 statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226, 226.3,
19 1174, and 1174.5. Derivative of the claims alleged above, the statements provided to Plaintiff and
20 aggrieved employees have not accurately reflected actual gross wages earned, including overtime,
21 phone and expense reimbursement, and total hour worked. Such failures caused injury to Plaintiff
22 and aggrieved employees, by, among other things, impeding them from knowing the total hours
23 worked and the amount of wages to which they are and were entitled, nor the accurate rate of
24 overtime pay they were entitled to. Defendants are liable for civil penalties pursuant to Labor Code
25 § 2698 *et seq*.

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1 **FIRST CAUSE OF ACTION**

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

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

6 54. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
7 Defendants during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of themselves and all
9 other current and former aggrieved employees of Defendants, the civil penalties provided by
10 PAGA, plus reasonable attorneys’ fees and costs.

11 55. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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

- 16 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)
- 18 b. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198,
19 2802, 2699 *et seq.*)
- 20 c. Failure to Provide Safe Working Conditions (Cal. Labor Code §1198, Wage Order
21 9)
- 22 d. Failure to Provide Rest Breaks and Cool-Down Rest Periods (Cal. Labor Code
23 §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 9)
- 24 e. Failure to Provide a Place of Employment that is Safe and Healthful (California
25 Labor Code section §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR
26 3202)
- 27 f. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204(a)
28 and 2698 *et seq.*)

g. Failure to Furnish and Maintain Accurate Wage Statements and Payroll Records
(Cal. Labor Code §§226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

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

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

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

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

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

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

63. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendants, Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code

provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved employees and the State of California.

PRAYER FOR RELIEF

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

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

DATED: October 21, 2021

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



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff Alfonso Guzman, and all
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

August 17, 2021

Via E-filing:

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

Via Certified U.S. Mail:

States Logistics Services, Inc.
c/o Daniel W. Monson
5650 Dolly Ave.
Buena Park, CA 90621

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*
 Claimant: Alfonso Guzman
 Employer: State Logistics Services, Inc.

Dear Sir or Madam:

Alfonso Guzman (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian II, Esq., of Law Offices of Sahag Majarian II to represent them, and all other aggrieved employees, for wage and hour claims against their former employer, States Logistics Services, Inc. (hereafter “Employer” or “SLS.”)

SLS is a warehousing, transportation and packaging logistics services company with locations throughout Southern California. Claimant worked for SLS as a loader and picker until January of 2021. Claimant is an aggrieved employee and their proposed PAGA representative action would represent numerous current and former aggrieved employees.

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 Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 1199, 2699 *et seq.*)

Section 2(H) or Wage Order 9 “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.”

Claimant and aggrieved employees were not paid for all hours worked, including overtime hours worked because of Employer’s policy of conducting required work activities off the clock and because employees were forced to wait in long lines in order to clock in for work. Employer also failed to reimburse employees for required personal cell phone and automobile use.

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:

Pre-Shift Work and Off-the-Clock Required Duties

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time.

At the beginning of the shift, when Claimant and aggrieved employees arrived at work, they are required to engage in temperature checks prior to clocking in. This process takes 3-5 minutes daily. In addition, Claimant and aggrieved employees had to wait in line in order to clock in, which took 1-2 minutes every work shift. Claimant and aggrieved employees were not paid for time spent getting temperature checks done or waiting in line off the clock.

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

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s timecard rounding and time shaving practices, as well as Employer’s practice of requiring employees to communicate via phone and text with Employers while employees were off the clock. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 9-2001. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked 10-12 hours per shift, and sometimes more wherein they were under the Employer’s control but not compensated for all of their time. 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 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 would use their cell phones as a calculator for necessary work duties. Calculators were not made available to them even though they were needed. Claimant and aggrieved employees had no choice but to use their cell phones during work for work related activities. In addition, from time-to-time Claimant and aggrieved employees would be required to travel from worksite to worksite during one shift. In order to do this they were forced to use their own means of transportation to get from one site to another. Claimant and aggrieved employees were not compensated for the use of their personal means of transportation that was used for work purposes. Also, Employers did not provide mandatory masks for Claimant and aggrieved employees to wear during work. Claimant and aggrieved employees were expected to provide their own masks and were only compensated \$10 for doing so. \$10 was not adequate to cover the costs of Claimant providing his own masks, which were mandatory in the workplace. Claimant and aggrieved employees were forced to use their cell phones and their personal means of transportation for work purposes and they were forced to provide their own masks to wear at work, but SLS failed to adequately 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 §1198, Wage Order 9)

Employer's workplaces would get unsafely hot in the summer and extremely cold in the winter. In many instances, Claimant and aggrieved employees are required to work in enclosed spaces where there is inadequate heating, cooling and ventilation.

Employer does not have proper climate control. Claimant and their coworkers worked in unbearable heat and humidity in the summer, and extreme cold during the winter.

Wage Order 9 ¶15 requires:

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

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

In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Rest Periods and Cool-Down Rest Periods

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

When rest breaks were taken, they were not compliant with California law. Employees, including Claimant, who worked in the warehouses were not provided with sufficient potable water or bathrooms or opportunities for cool down periods. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate restroom facilities and water to employees for use during required break and cool-down rest periods.

Employers frowned upon Claimant and aggrieved employees requests for cool down periods. During times when it became dangerously hot in the work areas and Claimant and aggrieved employees asked for a period of time to cool down, the Employers ignored their pleas for rest and cooling time and instead asked them to not take their requested time to recover because there was too much work to get done. When employees did receive rest breaks, they were not compliant for the following reasons:

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water.

Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Claimant and aggrieved employees were not provided with adequate

potable drinking water, as it was delivered on palets and sat in the warehouse becoming unreasonably hot and unpotable due to scorching temperatures reached inside.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” . Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

Legally Compliant Bathrooms

Rest breaks did not comply with state laws as required by Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient handwashing facilities and Claimant and aggrieved employees had to deal with a lack of soap being available much of the time, to all those needing to sanitize their hands after using the restroom or simply to keep safe from COVID and other illnesses.

California Labor Code §2350 requires employers to provides that “[e]very factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees.” Employer violated §2350 by failing to provide and maintain sanitary bathrooms for employees. Employer further violated 8 CCR §3457(c) by failing to provide adequate toilet and handwashing facilities.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were filthy, unsanitary, and non-compliant with minimum standards.

Employer failed to pay Claimant 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 these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on the above paystub. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by

the order is unlawful.” Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant 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. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to take precautions to ensure Employee safety after the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees, directly after the onset of COVID were required to partake in tool assignments to eliminate possible cross contamination of work items, but those activities were not enforced or practiced quickly after the onset of COVID and when COVID was still a health risk to the Employees. Claimant and aggrieved employees constantly had their assigned work tools taken from them and used by others, causing cross contamination throughout the workplace, yet Employers did nothing to maintain compliance of the tool assignment policy. Claimant did contract COVID at work due to such cross contamination and Employers lack of managing compliance of COVID safety precautions. Ultimately, the tools and machinery were not adequately sanitized by SLS. In addition, Employers did not provide masks for Claimant and aggrieved employees to wear in the workplace and failed to adequately reimburse them for providing their own masks. Also, Employers oftentimes failed to provide soap in the restrooms

so that Claimant and aggrieved employees could adequately sanitize their hands before going back to work and using work tools that were then passed around and shared. As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 204(a) 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 at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon 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 "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

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 restitution pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and 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 Furnish and Maintain Accurate Wage Statements and Payroll Records

(Cal. Labor Code §§ 226(a), 226.3, 1174, 1174.5, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226, 226.3, 1174, and 1174.5. Derivative of the claims alleged above, the statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime, phone reimbursement, and total hour worked. Such failures caused injury to Claimant and aggrieved employees, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled, nor the accurate rate of overtime pay they were entitled to. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has violated several California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it

does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant