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County of San Diego
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By Richard Day, Deputy Clerk

Attorneys for PLAINTIFF,
SAMUEL MISITA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAMUEL MISITA, an individual,

PLAINTIFF,

v.

COASTAL TRANSPORT CO., INC., a
corporation, and DOES 1-25, inclusive,

DEFENDANTS.

Case No.: 37-2016-00031058-CU-OE-CTL

COMPLAINT FOR:

1. **Failure to Pay Minimum Wage (Cal. Labor Code § 1197)**
2. **Wage Statement Violation (Cal. Labor Code § 226, 226.3, 1174, 1174.5)**
3. **Failure to Provide Meal Breaks (Cal. Labor Code §§ 226.7, 512)**
4. **Failure to Provide Rest Periods (Cal. Labor Code § 226.7)**
5. **Failure to Timely Pay Wages at Separation (Cal. Labor Code §§ 201-203)**
6. **Failure to Provide Personnel File (Cal. Labor Code § 1198.5)**
7. **Private Attorney General Act (Cal. Labor Code §§ 2698 *et seq.*)**
8. **Unfair Business Practices (Cal. Business and Professions Code §§ 17200 *et seq.*)**

[DEMAND FOR JURY TRIAL]

Plaintiff SAMUEL MISITA, alleges against Defendant COASTAL TRANSPORT CO., INC., and DOES 1-25, inclusive, as follows:

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2. Venue is proper in San Diego County pursuant to California Code of Civil Procedure section 395 *et seq.* because a substantial part of the acts, events, or omissions giving rise to the actions alleged herein took place in San Diego County, California.

3. The Plaintiff, SAMUEL MISITA ("MISITA"), is an individual residing in San Diego, California, San Diego County. MISITA was employed by COASTAL from on or about December 5, 2014, to on or about April 22, 2016. MISITA worked as a truck driver for COASTAL.

4. Defendant COASTAL is, and at all times relevant to this action, was a corporation, with its headquarters in San Antonio, Texas, but it is registered as an active corporation with the California Secretary of State and does a substantial amount of business in California. Specifically, COASTAL operates a business terminal at 9950 San Diego Mission Road, San Diego, California 92108. At all material times alleged herein, COASTAL employed more than five employees, COASTAL was MISITA's "employer," and MISITA was its "employee" as defined by California law.

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6. At all material times alleged herein, DOES 1-25, and each of them, were the agents, employees, partners, joint venturers, shareholders, officers, directors, members, co-conspirators, co-tortfeasors, and/or representatives of each of the defendants and were acting within the course and scope of said agency and representative capacities in committing the acts alleged in this complaint.

GENERAL ALLEGATIONS

7. As set forth above, COASTAL employed MISITA as a truck driver from on or about December 5, 2014, to on or about April 22, 2016. MISITA's main duty involved transporting fuel from San Diego to various gas stations in California.

8. MISITA worked very long hours throughout his tenure at COASTAL. He worked five days per week and regularly 14 or more hours per shift, depending on when he was finished delivering all of his loads. MISITA was paid on a piece-rate basis throughout his employment at the following rates: load pay of \$15.25 per unit, unload pay of \$15.25 per unit, and route pay of \$0.37 per mile.

9. COASTAL did not separately compensate MISITA for any "non-productive time," including pre-trip inspections, post-trip inspections, interim-trip inspections (such as post-fueling inspections and in between delivery inspections), time spent refueling, and time spent completing mandatory paperwork. Most of this information was tracked through COASTAL'S computer system "PeopleNet." COASTAL also did not separately compensate MISITA for any rest or recovery periods he may have taken.

10. At all times relevant herein, COASTAL routinely and systematically failed to properly record and keep track of accurate time records for each employee showing the amount of time taken to perform each job duty and/or when each employee accurately began and finished each shift. COASTAL also failed to provide MISITA with accurately itemized wage statements detailing the amount of hours worked, the amount of piece rate units completed, and

1 the corresponding rates of pay, such that MISITA was unable to calculate his correct amount of
2 pay.

3 11. In addition to this, COASTAL prevented MISITA from taking an uninterrupted,
4 10-minute rest break or 30-minute meal break each shift in accordance with California law.
5 COASTAL told MISITA that he had to finish delivering his loads before his shift ended, which
6 was supposed to be after 14 consecutive on-duty hours and 11 hours of driving. COASTAL
7 management discouraged MISITA from taking uninterrupted breaks and intimidated him into
8 eating while driving in order for him to deliver his loads quicker. As such, MISITA was never
9 completely relieved of all job duties at any point during his shifts.

10 12. COASTAL failed to pay MISITA all of his wages that were due after his
11 resignation on or about April 22, 2016, within the time limits prescribed by California law.

12 13. On April 6, 2016, MISITA made a written request for his personnel file to the San
13 Diego terminal manager, Brian Martin. Martin and COASTAL failed to provide or make
14 available MISITA's file within 30 days.

15 **FIRST CAUSE OF ACTION**

16 **(Failure to Pay Minimum Wage – California Labor Code §§ 226.2, 1182.12, 1197)**

17 14. MISITA incorporates by reference, as through set forth in full herein, each and
18 every allegation of paragraph 1 through 13 above.

19 15. California Labor Code § 1197 provides, "The minimum wage for employees fixed
20 by the commission is the minimum wage to be paid to employees, and the payment of a less
21 wage than the minimum so fixed is unlawful."

22 16. MISITA is informed and believes, and thereon alleges, that as a result of
23 COASTAL's pay practices, COASTAL failed to pay MISITA the minimum wage for a
24 significant amount of hours worked as required by Labor Code §§ 1182.12, 1197, 226.2 (for
25 work performed after January 1, 2016), and the Industrial Welfare Commission ("IWC") Wage
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1 Orders, including for rest and recovery periods and time spent performing “non-productive”
2 activities that was under the control of the employer.

3 17. As a direct and proximate result of COASTAL’s conduct, MISITA has suffered,
4 and continues to suffer, losses related to the use and enjoyment of the unpaid wages and lost
5 interest on such wages. Accordingly, pursuant to Labor Code § 1194, MISITA is entitled to
6 recover the unpaid balance of the minimum wage, including interest thereon, reasonable attorney
7 fees, and costs of suit, in amounts according to proof at trial.

8 18. As a further direct and proximate result of COASTAL’s conduct, MISITA is
9 entitled to recover liquidated damages pursuant to Labor Code § 1194.2, in an amount equal to
10 the unpaid minimum wages according to proof at trial. MISITA is also informed and believes,
11 and alleges thereon, that COASTAL are liable for civil penalties under Labor Code §§ 210, 558,
12 and 1197.1 in amounts according to proof at trial.

14 SECOND CAUSE OF ACTION

15 **(Wage Statement Violations – California Labor Code § 226, 226.3, 1174, 1174.5)**

16 19. MISITA incorporates by reference each and every allegation of paragraph 1
17 through 18 above.

18 20. Labor Code § 226 requires employers to provide employees an accurate itemized
19 statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
20 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
21 inclusive date of the period for which the employee is paid, (7) the name of the employee and his
22 or her social security number, (8) the name and address of the legal entity that is the employer,
23 and (9) all applicable hourly rates in effect and the corresponding number of hours worked.

24 21. At all times relevant herein, COASTAL failed to provide MISITA with accurate,
25 timely, itemized wage statements and records in accordance with the law. The wage statements
26 MISITA received did not include the accurate amount of hours worked, the amount of piece rate
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1 units completed, and the corresponding rates of pay. COASTAL also failed to maintain all
2 proper payroll records in accordance with Labor Code § 1174.

3 22. As a direct and proximate result of the COASTAL's unlawful conduct as set forth
4 above, MISITA is informed and believes, and thereon alleges, that he is entitled to penalties for
5 failure to maintain and provide itemized statements of employees pay and payroll records, in
6 violation of California Labor Code §§ 226(e), 226.3, 1174, 1174.5, in amounts according to
7 proof at trial.

8 **THIRD CAUSE OF ACTION**

9 **(Failure to Provide Meal Breaks - California Labor Code §§ 226.7, 512)**

10 23. MISITA incorporates by reference each and every allegation of paragraph 1
11 through 22 above.

12 24. IWC Wage Order 9-2001, Section 11 provides in part:

13 "No employer shall employ any person for a work period of more
14 than five (5) hours without a meal period of not less than 30
15 minutes.... Unless the employee is relieved of all duty during a 30
16 minute meal period, the meal period shall be considered an 'on
17 duty' meal period and counted as time worked. An 'on duty' meal
18 period shall be permitted only when the nature of the work
19 prevents an employee from being relieved of all duty and when by
20 written agreement between the parties an on-the-job paid meal
21 period is agreed to."

22 25. At all times relevant herein, MISITA was denied proper meal periods in
23 accordance with the law. He was not relieved of all duties during his meal periods, and they were
24 not "on duty" meal periods because he did not sign or execute a written agreement authorizing
25 on-the-job meal periods.

26 26. According to Labor Code §§ 226.7, 512, and IWC Wage Order 9-2001, Section
27 11(D), MISITA is informed and believes, and thereon alleges, that he is entitled to recover from
28 COASTAL damages equal to one hour of pay at his regular rate of pay for each workday that a
meal period was not provided according to proof at trial.

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Rest Periods - California Labor Code §§ 226.7)**

3 27. MISITA incorporates by reference each and every allegation of paragraph 1
4 through 26 above.

5
6 28. IWC Wage Order 9-2001, Section 12, requires employers to authorize and
7 permit all employees to take a ten minute rest break for every four hours of work or major
8 fraction thereof. Further, employers must pay an employee one hour of pay for each workday
9 that a rest period is not provided in accordance with the law. Labor Code § 226.7; IWC Wage
10 Order 9-2001, Section 12(B).

11 29. MISITA is informed and believes, and thereon alleges, that COASTAL
12 systematically prevented MISITA from being able to take rest breaks in accordance with the
13 wage order. COASTAL required MISITA to deliver all his assigned loads by the end of the
14 workday and did not permit him to take any uninterrupted ten minute breaks.

15
16 30. According to Labor Code § 226.7 and IWC Wage Order 9-2001, Section(12),
17 MISITA is informed and believes, and thereon alleges, that he is entitled to recover from
18 COASTAL damages equal to one hour of pay at his regular rate of pay for each workday that a
19 rest period was not provided according to proof at trial.
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21 **FIFTH CAUSE OF ACTION**

22 **(Failure to Timely Pay Wages at Separation - California Labor Code §§ 202, 203)**

23 31. MISITA incorporates by reference each and every allegation of paragraph 1
24 through 30 above.

25 32. Labor Code § 202 provides, "If an employee not having a written contract for a
26 definite period quits his or her employment, his or her wages shall become due and payable not
27 later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or
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1 her intention to quit, in which case the employee is entitled to his or her wages at the time of
2 quitting.”

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4 33. As stated above, MISITA is informed and believes, and alleges thereon, that he
5 resigned on or around April 22, 2016, and that COASTAL failed to pay MISITA all of his wages
6 within 72 hours of his resignation, as required by law. COASTAL is therefore liable for the full
7 waiting time penalty allowable under Labor Code § 203 in the amount of one day’s worth of
8 MISITA’S wages at his regular rate of pay, multiplied by 30, according to proof at trial.
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10 **SIXTH CAUSE OF ACTION**

11 **(Failure to Provide Personnel File - California Labor Code § 1198.5)**

12 34. MISITA incorporates by reference each and every allegation of paragraph 1
13 through 33 above.

14 35. Labor Code § 1198.5 requires employers to make an employee’s personnel file
15 available to the employee within 30 days of a written request. As stated above, MISITA made a
16 written request for his personnel file on April 6, 2016, via an email to the San Diego terminal
17 manager, Brian Martin, but COASTAL did not provide or make available MISITA’S personnel
18 file within the time prescribed by California law.

19 36. As a result, MISITA has suffered damages and is entitled to the penalties afforded
20 under section 1198.5(k). He is also informed and believes, and thereon alleges, that he is entitled
21 to injunctive relief to obtain compliance with this section, and is entitled to recover costs and
22 reasonable attorney’s fees under section 1198.5(l).
23

24 **SEVENTH CAUSE OF ACTION**

25 **(Private Attorney General Act - Cal. Labor Code §§ 2698 *et seq.*)**

26 37. MISITA incorporates by reference each and every allegation of paragraph 1
27 through 36 above.

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1 38. Pursuant to California Labor Code §2698 *et seq.*, MISITA is entitled to act as a
2 private attorney general to assess and recover civil penalties against COASTAL on behalf of
3 MISITA and any other current or former employees of COASTAL for violations of the
4 California Labor Code.
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6 39. MISITA, and many other California employees of COASTAL, have been affected
7 by COASTAL's failure to pay minimum wage, failure to provide accurate wage statements,
8 failure to provide meal and rest breaks, and failure to timely pay wages upon termination.
9 MISITA has complied with all the pre-lawsuit notice requirements outlined under California
10 Labor Code § 2698 *et seq.* The Workforce and Development Agency has not investigated
11 MISITA's allegations within the statutory timeframe pursuant to Labor Code § 2699.3. A true
12 and correct copy of said notice and letters is attached hereto as "**Exhibit A.**"
13

14 40. MISITA is entitled to recover 25% of any civil penalties assessed against
15 COASTAL for such violations, with the remaining 75% of the recover being paid to the Labor
16 and Workforce Development Agency.
17

18 41. Accordingly, MISITA seeks to recover any and all civil penalties otherwise
19 capable of being collected under the law, including, but in no way limited to, any statutes
20 applicable under § 2699.5, and any penalty provisions provided for by §§ 210, 226.3, 558, and
21 1197.1.
22

23 42. Labor Code § 2699(g) also provides for the payment of reasonable attorneys' fees
24 and costs to a prevailing party seeking recovery under the Private Attorney General Act.
25 Accordingly, Plaintiff seek to recover civil penalties, attorneys' fees, and costs in an amount to
26 be proven at trial pursuant to any applicable provisions of the law.
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1 **EIGHTH CAUSE OF ACTION**

2 **(Unfair Business Practices - Business and Professions Code § 17200 *et seq.*)**

3 43. MISITA incorporates by reference, as though set forth in full herein, each and
4 every allegation of paragraph 1 through 42 above.

5 44. MISITA alleges that COASTAL engaged in unfair, unlawful and fraudulent
6 business practices by: (1) failing and refusing to pay MISITA and other similarly situated
7 employees minimum wage for all hours worked; (2) requiring MISITA and other similarly
8 situated employees to work during rest periods and meal breaks; (3) intentionally failing to
9 provide accurate itemized statements to MISITA and other similarly situated employees; and (4)
10 willfully failing to pay MISITA and other similarly situated employees all wages due at the time
11 of their separation, as alleged above.
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13 45. Accordingly, MISITA seeks injunctive relief including, but not limited to, orders
14 that COASTAL account for, disgorge, and restore to MISITA the compensation unlawfully
15 withheld in amounts according to proof at trial.
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17 **PRAYER FOR RELIEF**

18 WHEREFORE, MISITA prays for relief against COASTAL as follows:

19 **ON THE FIRST CAUSE OF ACTION**

- 20 1. For all actual, consequential, and incidental losses and damages according
21 to proof at trial;
22 2. For statutory penalties pursuant to California Labor Code §§ 210, 558, 1197.1,
23 and all other applicable Labor Code and/or employment laws and regulations;
24 3. For liquidated damages pursuant to Labor Code § 1194.2, according to proof at
25 trial;

26 **ON THE SECOND CAUSE OF ACTION**

- 27 4. For all actual, consequential, and incidental losses and damages according
28 to proof at trial;

- 1 5. For statutory penalties pursuant to California Labor Code §§ 226(e), 226.3, 1174,
2 1174.5, and all other applicable Labor Code and/or employment laws and
3 regulations;

4 **ON THE THIRD CAUSE OF ACTION**

- 5 6. For all actual, consequential, and incidental losses and damages according
6 to proof at trial;
7 7. For statutory penalties pursuant to California Labor Code §§ 226.7, 512, and all
8 other applicable Labor Code and/or employment laws and regulations;

9 **ON THE FOURTH CAUSE OF ACTION**

- 10 8. For all actual, consequential, and incidental losses and damages according
11 to proof at trial;
12 9. For statutory penalties pursuant to California Labor Code § 226.7, and all other
13 applicable Labor Code and/or employment laws and regulations;

14 **ON THE FIFTH CAUSE OF ACTION**

- 15 10. For all actual, consequential, and incidental losses and damages according
16 to proof at trial;
17 11. For statutory penalties pursuant to California Labor Code § 203, and all other
18 applicable Labor Code and/or employment laws and regulations;

19 **ON THE SIXTH CAUSE OF ACTION**

- 20 12. For all actual, consequential, and incidental losses and damages according
21 to proof at trial;
22 13. For injunctive relief;
23 14. For reasonable attorney's fees, in accordance with applicable provisions of law;
24 15. For statutory penalties pursuant to California Labor Code § 1198.5(k), and all
25 other applicable Labor Code and/or employment laws and regulations;

26 **ON THE SEVENTH CAUSE OF ACTION**

- 27 16. For civil penalties pursuant to all applicable Labor Code and/or employment laws
28 and regulations;
17. For reasonable attorney's fees, in accordance with applicable provisions of law;

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- ON ALL CAUSES OF ACTION
21. For costs of suit incurred herein;
22. For such other and further relief the Court may deem just and proper.

Date: September 1, 2016



Anthony S. Khoury, Of Counsel
LEVINE & BLIT LLP
Attorneys for Plaintiff SAMUEL MISITA

EXHIBIT "A"



Levine & Blit
Attorneys at Law

Mark Iodice

Attorney at Law
miodice@levineblit.com
(310) 281-0100

LOS ANGELES

May 2, 2016

Re: Written Notice – Private Attorneys General Act (“PAGA”) – California

Labor Code Section 2698 et seq.

Via Certified Mail

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

Coastal Transport Co., Inc.
1603 Ackerman Road
San Antonio, Texas 78219

CT Corporation System
818 West Seventh St. Ste 930
Los Angeles, CA 90017

Re: Written PAGA Notice Pursuant to Labor Code § 2698 et seq.

Dear PAGA Administrator:

Levine & Blit, LLP represents Mr. Sam Misita in his claims against Coastal Transport Co., Inc., (“Coastal Transport”) his former employer. The purpose of this letter is to exhaust the statutory requirements of the California Labor Code’s Private Attorney General Act (Cal. Lab. Code §§ 2688 *et seq.*) (“PAGA”) before Mr. Misita pursues a PAGA representative action against Coastal Transport. Mr. Misita wishes to pursue this action on behalf of himself as an aggrieved employee and on behalf of all other current and former employees who work or worked for Coastal Transport in California within the applicable statutory period. Mr. Misita worked for Coastal Transport Co., Inc., as a employee and suffered the violations of the California Labor Code: §§ 510, 1194, 1197, 1197.1; 226; 201-203; and 17200, *et seq.* Herewith, please find the facts and theories supporting the above violations.

I. Failure to Pay Minimum Wage

Pursuant to Cal. Labor Code §§ 1194, 1197, 1197.1, and I.W.C. Wage Orders No. 5-2001, 15-2001. California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Orders 5-2001 and 15-2001 entitle non-exempt employees to an amount equal to or greater than the minimum wage for all hours worked. All hours worked must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

The truck drivers at Coastal Transport are not paid for time spent performing non-exempt truck driver duties including but not limited to: pre-trip and post-trip inspections, rest breaks, time spent completing paperwork, time spent fueling the tractor, time spent at weigh scales, wait time and/or unscheduled time, and layover time.

The Central District of California in *Cardenas* considered the lawfulness of the defendant's piece-rate pay formula for paying truck drivers. *Cardenas*, 796 F.Supp. 2d at 1248.. Citing *Armenta* and a 2002 DLSE (Division of Labor Standards Enforcement) opinion letter,³ the court noted the clear legislative intent to protect the minimum wage rights of California employees—specifically, that the averaging method used by federal courts to assess violations of the federal minimum wage law does not apply to California minimum wage violations. *Id.* at 1251. The court reasoned that “a piece-rate formula that does not compensate directly for all time worked does not comply with California Labor Codes, even if, averaged out, it would pay at least minimum wage for all hours worked.”

II. Failure to Pay Overtime

A. Mr. Misita was a Non-Exempt Employee and Entitled to Overtime

Mr. Misita was hired by Coastal Transport, on or about December 5, 2014, as an truck driver and remained employed as such until on or about April 22, 2016. Mr. Misita and other similarly situated employees were classified by Coastal Transport as exempt employees and were not compensated for overtime. Mr. Misita and other drivers would work over eight hours a day. They spent their time performing non-exempt truck driver duties including but not limited to: pre-trip and post-trip inspections, rest breaks, time spent completing paperwork, time spent fueling the truck, time spent at weigh scales, wait time and/or unscheduled time, and layover time.

Pursuant to the California Labor Code and Industrial Welfare Commission (“IWC”) regulations, employees are entitled to overtime pay, double time pay, meal breaks, and rest breaks unless they come within one of the law's limited exemptions.

B. Failure to Pay Overtime

Coastal Transport violated Labor Code § 510 for failing to pay Mr. Misita, along with other similarly situated employees, overtime wages in accordance with the law. Section 510 of the California Labor Code states as follows:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one work week shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Coastal Transport willfully misclassified Mr. Misita as well as other similarly situated employees as “exempt” for purposes of the payment of overtime compensation when, in fact, they were “non-exempt” employees according to California law. Mr. Misita, and other similarly situated employees routinely worked in excess of forty hours per week and in excess of eight hours per day and do not meet any of California's limited overtime exemption classifications.

III. Failure to Provide Rest Breaks

IWC Order 5-2001, Section 12 requires employers to authorize and permit non-exempt employees to take a ten-minute rest break for every four hours of work. This rest period must be counted as hours worked for which there shall be no deduction from wages. Employers cannot require employees to work during these mandated rest periods. If an employer fails to comply with the legal requirements, it is liable for a premium of one hour's worth of pay for each day there is a missed rest break. Labor Code § 226.7(c); IWC Order 5-2001, Section 12 (B).

Based on the performance of their work, driving a vehicle to a load and unload site, Sam Misita, and similarly situated employees, were not afforded rest breaks as required by law.

IV. Failure to Provide Meal Breaks

Pursuant to Labor Code § 512 and Industrial Welfare Commission (IWC) Order 5-2001, Section 11, employers are required to provide non-exempt employees a meal period of at least 30 minutes when the work period is more than five hours and a second meal period of at least 30 minutes when the work period is more than ten hours. The employee must be relieved of all duty during this meal period, otherwise it is an "on duty" meal period and must be counted as time worked. An "on duty" meal period shall be permitted *only* when the nature of the work prevents an employee from being relieved of all duty *and* when an on-the-job paid meal period is agreed to by written agreement between the parties. If an employer fails to comply with the meal period requirements, it must pay the employee a premium of one hour's worth of pay at the employee's regular rate for each day that the employer failed to provide a meal period. Labor Code § 226.7(c); IWC Order 5-2001, Section 11 (B).

Since Coastal Transport classified Mr. Misita and other truck drivers as exempt employees, they were not given the opportunity to take their meal breaks as required by California law. Coastal Transport denied Mr. Misita, and other similarly situated employees mandated meal breaks under California law, which constituted an unfair business practice under the Business and Professions Code 17200 *et seq.*

V. Failure to Provide Itemized Statements

California Labor Code §226 requires every employer, semimonthly or at the time of each payment of wages, to furnish each of its employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing, among other things: (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned and (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. California Labor Code § 1174 also requires every employer to keep payroll records showing the hours worked daily and the wages paid to its employees. Since Coastal Transport misclassified Mr. Misita as exempt, their pay statements did not include the total number of hours they worked and did not include their overtime and double time rates. Because Coastal Transport willfully failed to provide Mr. Misita, and other similarly situated employees with proper itemized statements, it is in violation of the Labor Code and liable for the associated penalties and civil penalties.

VI. Waiting Time Penalties

Pursuant to Labor Code § 205, when an employer willfully fails to pay any wages of an employee who is discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or a maximum of 30 days has transpired. Coastal Transport failed to properly pay Mr. Misita, and other similarly situated employees overtime wages throughout their employment. They were entitled to be paid all of these back wages on the date of their terminations, but none of these wages have been paid. Therefore, Coastal Transport is liable for the maximum 30 day waiting time penalty.

VII. Private Attorney General Act (PAGA)

California law permits individuals to sue on behalf of the Labor and Workforce Development Agency to eradicate violations of the Labor Code by allowing a private plaintiff to seek and recover the civil penalties associated with each Labor Code violation. Labor Code § 2698 *et seq.* Not only does a so called PAGA action authorize the plaintiff to recover the penalties for violations that harm the plaintiff, it also permits the plaintiff to recover civil penalties for violations affecting all of the other employees. In these quasi-class action suits, the aggrieved employees are entitled to keep 25% of the penalties recovered, with the other 75% going to the State. Mr. Misita, on behalf of themselves and other similarly situated employees, seek civil penalties under PAGA for each of the above Labor Code violations.

In accordance with the required notice under PAGA, this letter shall serve as formal written notice to the Labor and Workforce Development Agency and the employer of the above Labor Code violations for all employees of Coastal Transport.

Very truly yours,



LEVINE & BLIT LLP

Mark Iodice, Esq.

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 City, State, ZIP+4: San Antonio, Texas 78219

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