

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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Attorneys for Plaintiff,  
FREDDY ESPINOZA on behalf of  
himself, all aggrieved employees, and the State  
of California as a Private Attorneys General

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN LOS ANGELES**

FREDDY ESPINOZA, an individual, on behalf ) Case No.: **23STCV03860**  
of himself, all aggrieved employees, and the )  
State of California as a Private Attorneys )  
General, )

Plaintiff,

**REPRESENTATIVE ACTION**

vs.

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

WAYNE PROVISION CO, INC., a California )  
Corporation, DBA PREMIER MEATS, a )  
California Corporation, and DOES 1-50, )  
inclusive, )

Defendants.

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

#### 4 NATURE OF THE ACTION

5 1. Plaintiff FREDDY ESPINOZA worked as an employee for Defendant WAYNE  
6 PROVISION CO, INC. DBA PREMIER MEATS and Does 1-50 (collectively “Defendants”).  
7 Defendants are a meat processing company in Los Angeles, California. Plaintiff FREDDY  
8 ESPINOZA worked at their meat processing facility until August 13, 2022.

9 2. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004  
10 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,  
11 nonexempt employees of Defendants within one year of serving notice on the LWDA to the present  
12 are aggrieved employees.

13 3. Defendants failed to comply with California Labor Code requirements due to erroneous,  
14 willful and intentional employment practices and policies. Plaintiff brings this representative  
15 action on behalf of himself, all other similarly situated aggrieved employees, and the State of  
16 California, based upon the claims articulated below.

17 4. Plaintiff provided notice of his claims pursuant to §2698 *et. seq.*, to the Labor and  
18 Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content  
19 of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff  
20 following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly,  
21 Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act  
22 (“PAGA”), Labor Code §2698 *et seq.*

23 5. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all hours  
24 worked including overtime hours worked; (2) failing to provide uninterrupted meal breaks &  
25 second meal breaks; (3) failing to provide rest breaks; (4) failing to reimburse for required business  
26 expenses; (5) failing to timely pay all wages owed; (6) and failing to provide accurate itemized  
27 wage statements and violating record keeping requirements. Defendants are therefore liable for  
28

1 civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”),  
2 Labor Code §2698 *et seq.*, as described more fully herein.

### 3 4 **THE PARTIES**

5 6. Plaintiff FREDDY ESPINOZA is a resident of the State of California and worked for  
6 Defendants until August 13, 2022.

7 7. Defendants WAYNE PROVISION CO, INC. and DBA PREMIER MEATS is a  
8 California corporation authorized to do business and doing business in California with the capacity  
9 to sue and to be sued, and doing business, in the county of Los Angeles, State of California.

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

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

### 22 **JURISDICTION AND VENUE**

23 10. Venue is proper in this judicial district because Defendants conduct business in this  
24 county and each Defendants have legal obligations to Plaintiff and many of the aggrieved  
25 employees in this case that arose in this county.

26 11. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of  
27 the Superior Court and will be established according to proof at trial. Based on information,  
28 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for

1 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars  
2 (\$25,000).

3 12. The California Superior Court has jurisdiction in this matter because Plaintiff is a  
4 resident of California and Defendants are qualified to do business in California and regularly  
5 conduct business in California. Further, there is no federal question at issue as the claims herein  
6 are based solely on California law.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 13. During the relevant time-period, Defendants committed various violations of the  
9 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that  
10 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

11 14. This representative action represents over one hundred current and former aggrieved  
12 employees.

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

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

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

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

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

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

26 19. Section 2(H) of Wage Order 9 defines "hours worked" as "the time during which an  
27 employee is subject to the control of an employer, and including all the time the employee is  
28 suffered or permitted to work, whether or not required to do so." Defendants have been engaged

1 in many unlawful employment practices which resulted in underpayment for hours worked each  
2 pay period, including overtime hours worked, as more fully set forth below.

3 20. Plaintiff and aggrieved employees were required to work during unpaid meal periods.  
4 Plaintiff and aggrieved employees were given an excessive number of deliveries to make each day,  
5 and the unreasonable delivery expectations placed on Plaintiff and aggrieved employees served as  
6 a basis for many of the wage and hour violations described herein. In addition, Plaintiff and  
7 aggrieved employees were required to work off the clock on a daily basis due to time spent walking  
8 from their work areas to and from the timeclock located deep within the warehouse and back out  
9 to their work areas.

10 21. Plaintiff and aggrieved employees were not paid for all time worked, resulting in failure  
11 to pay wages, including overtime and minimum wages. Additionally, when overtime and penalty  
12 wages were paid, Defendants failed to pay them at the accurate regular rate of pay. Defendants  
13 have violated Labor Code §§510 1194, 1194.2, 1197, 1198, 1199 and Wage Order 9. Defendants  
14 are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

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

23 **Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks**

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

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

27 24. During Plaintiff's employment, Defendants failed to maintain a compliant meal period  
28 policy and practice. Defendants failed to provide all its hourly employees with their right to take

1 all required timely, off-duty, unpaid 30-minute meal periods. Labor Code §512 provides, “[a]n  
2 employer may not employ an employee for a work period of more than five hours per day without  
3 providing the employee with a meal period of not less than 30 minutes...An employer shall not  
4 employ an employee for a work period of more than 10 hours per day without providing the  
5 employee with a second meal period of not less than 30 minutes.”

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

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

18 27. Additionally, meal and rest breaks were not compliant because Defendants failed to  
19 provide a bathroom for their use. Plaintiff and aggrieved employees were required to be out  
20 delivering packages all day. Plaintiff and aggrieved employees were not allowed to go back to the  
21 workplace to use the restroom or otherwise vary from their delivery route. Defendants placed a  
22 tracking device on employees’ keychains so they would know where they were at all times, and  
23 even monitored employees using in-vehicle cameras, and were thus aware of these break  
24 violations.

25 28. Defendants failed to assure Plaintiff and others take timely, off-duty, meal breaks of  
26 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code  
27 §§226.7, 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were  
28 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor

1 Code §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to  
2 Cal. Labor Code §558 and §2698 *et. seq.*

3 **Failure to Provide Rest Breaks**

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

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

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

10 31. Plaintiff and aggrieved employees were unable to take compliant rest periods for the  
11 same reasons they were unable to take compliant meal periods. First, they were overworked and  
12 overtasked, unable to fulfill the demands of the job and take any sort of break. Second, there were  
13 no restroom facilities provided and few restroom facilities available.

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

21 **Failure to Reimburse For Required Business Expenses**

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

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

25 34. Plaintiff and aggrieved employees were required to use their personal cell phones for  
26 work purposes. For example, they were required to download the ADP app and use it to clock in  
27 and out when out in the field for meal breaks. Additionally, Defendants would call Plaintiff and  
28 aggrieved employees on their personal cell phones even though there were other communication

1 devices in the vehicle. Instead of calling the in-vehicle communication device, the Defendants  
2 would first directly text or call the employee's personal phone.

3 35. Defendants required Plaintiff and employees to utilize their personal cell phones for  
4 work purposes but failed to reimburse Plaintiff and employees for this use as required by the Labor  
5 Code. Accordingly, Defendants are liable for civil penalties under PAGA §2699 *et seq.*

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

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

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

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

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

**Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements**

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

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

40. 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.”

41. 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.”

42. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff 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 Plaintiff 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.

43. Such failures caused injury to Plaintiff 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. Defendants' unlawful employment practices were knowing and intentional, and thus Defendants knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Defendants are liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

**FIRST CAUSE OF ACTION**

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

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

45. Plaintiff is an “aggrieved employee” under PAGA, as he 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 himself and all other current and former aggrieved employees of Defendants, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

46. 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. 4<sup>th</sup> 969. Therefore, class certification of the PAGA claims brought herein is not required.

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

- a. 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);
- b. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 9)
- c. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order 9);

- 1           d. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§1198,  
2           2802, 2699 *et seq.*);
- 3           e. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 204, 210,  
4           1199 and 2698 *et seq.*);
- 5           f. Failure to Provide Accurate Itemized Wage Statements and Violation of Record  
6           Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1199, 2699 *et seq.*).

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

11           49. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil  
12 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations  
13 for each underpaid employee for each pay period for which the employee was underpaid, and one  
14 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period  
15 for which the employee was underpaid.

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

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

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

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

28

54. 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 his 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: February 22, 2023

**KOUL LAW FIRM**

**MAJARIAN GROUP APC**

*[Signature]*

BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff FREDDY ESPINOZA, and  
all aggrieved employees

# **EXHIBIT 1**



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October 20, 2022

**Via E-filing:**

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

**Via Certified U.S. Mail:**

Wayne Provision Co, Inc.  
DBA Premier Meats  
5030 Gifford Ave  
Vernon, CA 90058

Re: PAGA Notice Pursuant to California Labor Code §2699  
Claimant: Freddy Espinoza  
Employer: Wayne Provision Co, Inc. DBA Premier Meats

Dear Sir or Madam:

Freddy Espinoza (hereafter “Claimant”) has retained Nazo Koulloukian, Esq. of Koul Law Firm, and Garen Majarian of Majarian Law Group, PC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer Wayne Provision Co, Inc. DBA Premier Meats, hereafter “Employer.”

Claimant worked for Employer as a delivery driver earning at or near minimum wage until August 13, 2022. Claimant and other aggrieved employees experienced numerous wage and hour violations as discussed below.

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.

Employees were required to work during unpaid meal periods. Claimant and aggrieved employees were given an excessive number of deliveries to make 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. In addition, Claimant and aggrieved employees were required to work off the clock on a daily basis due to time spent walking from their work areas to and from the timeclock located deep within the warehouse and back out to their work areas.

Claimant and aggrieved employees were not paid for all time worked, resulting in failure to pay wages, including overtime and minimum wages. Additionally, when overtime and penalty wages were paid, Employer failed to pay them at the accurate regular rate of pay. 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 items to deliver each day. Claimant and aggrieved employees could not deliver all required items 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. Employer placed a tracking device on Claimant and aggrieved employees keychains so they would know where they were at all times, and even monitored employees using in-vehicle cameras, and were thus aware of these break violations.

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 few restroom facilities available.

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 the ADP app and use it to clock in and out when out in the field for meal breaks. Additionally, Employer would call Claimant and aggrieved employees on their personal cell phones even though there were other communication devices in the vehicle. Instead of calling the in-vehicle communication device, the Employer would first directly text or call the employee's personal phone.

Employer required Claimant and employees to utilize their personal cell phones 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 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 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,

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

Nazo Koulloukian, Esq.  
Attorney for Claimant