

Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Attorneys for Plaintiff,
ESMERALDA VELAZQUEZ on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ESMERALDA VELAZQUEZ, an individual,
on behalf of herself, all aggrieved employees,
and the State of California as a Private
Attorneys General,

Plaintiff,

vs.

TERMINAL SECURITY SOLUTIONS, INC.,
a California Corporation and DOES 1-50,
inclusive,

Defendant.

Case No.: **23STCV10687**

REPRESENTATIVE ACTION

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

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

NATURE OF THE ACTION

1. Plaintiff ESMERALDA VELAZQUEZ worked as an employee for Defendant
TERMINAL SECURITY SOLUTIONS, INC. and Does 1-50 (collectively "Defendant").

1 Defendant owns and operates a security service company. Plaintiff ESMERALDA VELAZQUEZ
2 worked for Defendant until May 2022. Plaintiff brings this action pursuant to the Private Attorneys
3 General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All
4 current and former employees of Defendant within one year of serving notice on the LWDA to the
5 present are aggrieved employees.

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

15 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
16 worked, including overtime hours worked; (2) failing to pay wages due upon termination ; (3)
17 failing to provide rest breaks; (4) failing to provide uninterrupted meal breaks; (5) failing to
18 provide suitable seating; (6) failing to reimburse for required business expenses; (7) failing to
19 provide place of employment that is safe and healthful; (8) failing to provide accurate itemized
20 wage statements and violating record keeping requirements. Defendant is therefore liable for civil
21 penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor
22 Code §2698 *et seq.*, as described more fully herein.

23 THE PARTIES

24 4. Plaintiff ESMERALDA VELAZQUEZ is a resident of the State of California and
25 worked for Defendant until May 2022.

26 5. Defendant TERMINAL SECURITY SOLUTIONS, INC. is a California corporation
27 authorized to do business and doing business in California with the capacity to sue and to be sued,
28 and doing business, in the county of Los Angeles, State of California.

6. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is legally responsible for the wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff 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 Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district because Defendant conducts 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 minimal 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 Defendant is 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.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 11. During the relevant time-period, Defendant committed various violations of the
3 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 12. This representative action represents over one hundred current and former aggrieved
6 employees.

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

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

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

15 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

16 (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197,
17 1197.1, 1198, 2698 *et seq.*, Wage Order)

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

20 17. The Wage Orders define “hours worked” as “the time during which an employee is
21 subject to the control of an including all the time the employee is suffered or permitted to work,
22 whether or not required to do so.” Defendant has been engaged in many unlawful employment
23 practices which resulted in underpayment for hours worked each pay period, including requiring
24 Plaintiff and her coworkers to work off the clock when clocked out for lunch, and other pre and
25 post shift activities. Based on Defendant’s unlawful conduct, and because Plaintiff and the
26 aggrieved employees were paid at or near minimum wage, Defendant’s failure to pay for all hours
27 worked, including overtime, resulted in a payment of less than the minimum wage for all hours
28

1 worked, in violation of Labor Code §§510 1194, 1194.2, 1197,1197.1, 1198, 1199 and the Wage
2 Orders. Defendant is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

3 **Failure to Pay Wages Due Upon Termination**

4 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

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

7 19. An employee who is discharged must be paid all of his or her wages, including accrued
8 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
9 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
10 Plaintiff at the time employment terminated. Defendant willfully failed to pay employees who are
11 no longer employed by it all compensation due upon termination of employment as required by
12 Cal. Lab. Code §§201 and 202.

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

20 21. Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30)
21 days pay as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties
22 pursuant to Cal. Lab. Code § 2698 *et. seq.*

23 **Failure to Provide Rest Breaks**

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

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

1 23. Defendant has failed to maintain a compliant rest period policy and practice that
2 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
3 that she often missed rest breaks, especially around the holidays, due to short staffing.

4 24. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
5 duty”, or not scheduled before and after a meal period for shifts greater than six hours, as
6 prescribed by California law because Defendant: (1) did not account for all hours worked that were
7 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
8 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
9 inform and train employees about when, where and how to take timely and uninterrupted ten-
10 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
11 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
12 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
13 break policy.

14 25. Defendant did not authorize or permit all of its hourly employees to take at least a ten
15 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
16 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks
17 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
18 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
19 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

20 **Failure to Provide Uninterrupted Meal Breaks**

21 (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*)

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

24 27. During Plaintiff’s employment, Defendant failed to maintain a compliant meal period
25 policy and practice. Plaintiff’s meal breaks were almost always interrupted due to chronic
26 understaffing. Defendant failed to provide all of its hourly employees with their right to take an
27 off-duty unpaid 30-minute meal period. Labor Code §512 provides, “[a]n employer may not
28 employ an employee for a work period of more than five hours per day without providing the

1 employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o
2 employer shall require an employee to work during any meal... period mandated by an applicable
3 order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in
4 pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the
5 meal period shall be considered an 'on duty' meal period and counted as time worked." Labor
6 Code 1198 states that any violation of a wage order is a violation of the Labor Code.

7 28. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
8 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
9 (2) did not adequately inform and train employees about their rights to meal periods and premium
10 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
11 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
12 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
13 periods; and/or (5) because management at various levels, affecting all hourly, non-exempt
14 employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff
15 and aggrieved employees were not paid a premium payment, paid as an hour's wage when meal
16 periods were not given to them in compliance with California law.

17 **Failure To Provide Suitable Seating**

18 (Lab. Code section 1198 and Wage Order)

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

21 30. Labor Code section 1198 states, in pertinent part, "The employment of any employee...
22 under conditions of labor prohibited by the [Wage Order] is unlawful."

23 31. The Wage Order provides that:

- 24 a. All working employees shall be provided with suitable seats when the nature of the
25 work reasonably permits the use of seats.
26 b. When employees are not engaged in the active duties of their employment and the
27 nature of the work requires standing, an adequate number of suitable seats shall be
28

1 placed in reasonable proximity to the work area and employees shall be permitted
2 to use such seats when it does not interfere with the performance of their duties.

3 32. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
4 with suitable seating during their employment as required by the applicable Wage Order. In fact,
5 Plaintiff and her coworkers found it necessary to bring in their own chairs so that they could sit
6 while performing tasks that can reasonably and successfully be accomplished while seated.

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

8 (Cal. Labor Code §§1198, 2802, 2698 *et seq.*)

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

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

13 35. Plaintiff and aggrieved employees are required to use their personal cell phones for
14 work purposes, including downloading a timekeeping app. Plaintiff and aggrieved employees were
15 also required to use their personal phones for work-related communications, although Defendant
16 did not reimburse them in any way for the expense of their personal cell phone use as required by
17 the Labor Code. Plaintiff and her coworkers were also required to purchase specific apparel to
18 wear on the job which was also unreimbursed. Accordingly, Defendant is liable for civil penalties
19 under PAGA §2699 *et seq.*

20 **Failure to Provide Place Of Employment That Is Safe And Healthful**

21 (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*)

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

24 37. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment
25 and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code
26 §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall
27 adopt and use practices, means, methods, operations, and processes which are reasonably adequate
28 to render such employment and place of employment safe and healthful. Every employer. Pursuant

1 to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any
2 employment or place of employment which is not safe and healthful. Cal. Labor Code §6403
3 states that no employer shall fail or neglect to provide and use safety devices and safeguards
4 reasonably adequate to render the employment and place of employment safe, or to adopt and use
5 methods and processes reasonably adequate to render the employment and place of employment
6 safe, or to do every other thing reasonably necessary to protect the life, safety, and health of
7 employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place
8 of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every
9 employer and every employee shall comply with occupational safety and health standards,
10 with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders
11 pursuant to this division which are applicable to her own actions and conduct.

12 38. Defendant failed to timely make changes to the workplace at the onset of COVID.
13 Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2
14 (SARS-CoV-2). Defendant required employees infected with COVID to come to work without
15 regard for the health and safety of Plaintiff and aggrieved employees. Plaintiff and aggrieved
16 employees continued to work without distancing throughout the pandemic, and were employed
17 under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

18 39. As a result of these practices, Defendant has violated Cal. Labor Code §§6400, 6401,
19 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their
20 employees, as outlined above. Defendant is liable for civil penalties pursuant to Cal. Labor Code
21 §2699 *et seq.*

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

24 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*)

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

27 41. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
28 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226

1 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
2 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
3 actual gross wages earned, including pay for all hours worked, and overtime, in addition to penalty
4 wages.

5 42. Such failures caused injury to Plaintiff and others, by, among other things, impeding
6 them from knowing the total hours worked and the amount of wages to which they are and were
7 entitled and from identifying the true legal employer for purposes of asserting wage and hour
8 claims. Defendant knowingly and intentionally failed to itemize the gross wages earned, net wages
9 earned, and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code §
10 2698 *et seq.*

11 43. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
12 employees to sign employment related contracts and documents that contained unlawful terms of
13 employment.

14 **FIRST CAUSE OF ACTION**

15 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

16 **(California Labor Code §2698 *et seq.*)**

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

19 45. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
20 during the applicable statutory period and suffered one or more of the Labor Code violations set
21 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
22 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
23 attorneys’ fees and costs.

24 46. Plaintiff seeks to recover the PAGA civil penalties through a representative action
25 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
26 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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

- a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order);
- b. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*);
- c. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*);
- d. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*);
- e. Failure to Provide Suitable Seating (Cal. Labor Code §§1198, Wage Order);
- f. Failure to Reimburse Required Business Expenses (Cal. Labor Code §§1198, 2802, 2698 *et seq.*);
- g. Failure to Provide Place Of Employment That Is Safe And Healthful (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*);
- h. Failure to Provide Accurate Itemized Wage Statements and Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

48. 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).

49. With respect to violations of Labor Code §512, 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.

50. 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

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
2 a civil penalty is not specifically provided.

3 51. Plaintiff and the other current and former employees of Defendant are aggrieved
4 employees. They were or are employed by Defendant, and each of them, and the violations alleged
5 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
6 current and former aggrieved employees.

7 52. At the time of each violation, Defendant employed one or more employees.

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

11 54. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
12 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
13 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
14 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
15 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
16 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
17 §2699.3, Plaintiff may now pursue her PAGA claims in this action on behalf of aggrieved
18 employees and the State of California.

19 20 **PRAYER FOR RELIEF**

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

- 23 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
24 determined at trial, but at least the jurisdictional amount of this Court;
- 25 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
26 and/or other applicable law;
- 27 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
28 law;

- 1 4. Pre-judgement and post-judgement interest as provided by law; and
2 5. Such other and further relief that the Court may deem just and proper.
3

4 DATED: May 10, 2023

KOUL LAW FIRM

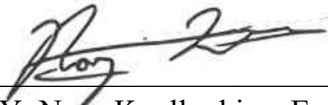
5
6 
7 BY: Nazo Koulloukian, Esq.
8 Attorneys for Plaintiff ESMERALDA
9 VELAZQUEZ, and all aggrieved employees
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

February 23, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Terminal Security Solutions, Inc.
3806 Worsham Avenue
Long Beach, CA 90808

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Esmeralda Velazquez
Employer: Terminal Security Solutions, Inc.

Dear Sir or Madam:

Claimant Esmeralda Velazquez has retained Nazo Koulloukian, Esq. of the Koul Law Firm to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Terminal Security Solutions, Inc. (hereafter “Employer”).

Employer provides security guard services. Claimant worked for Employer until May of 2022. Claimant and her coworkers are 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 §§204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an 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 requiring Claimant and her coworkers to work off the clock when clocked out for lunch, and other pre and post shift activities. Based on Employer’s unlawful conduct, 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 §§510, 1194, 1194.2, 1197, 1197.1, 1198, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.

Additionally, 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.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

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

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that she often missed rest breaks, especially around the holidays, due to short staffing.

Rest periods were either less than ten minutes, not provided, interrupted or late, “on duty”, or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest

breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Claimant's meal breaks were almost always interrupted due to chronic understaffing. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. 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..." 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." Paragraph 11(A) of the Wage Orders 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 states that any violation of a wage order is a violation of the Labor Code.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure To Provide Suitable Seating

Lab. Code section 1198 and Wage Order

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

The Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by the applicable Wage Order. In fact, Claimant found it necessary to bring in her own chair so that she could sit while performing tasks that can reasonably and successfully be accomplished while seated.

Failure to Reimburse for Required Business Expenses

Cal. Labor Code §§1198, 2802, 2698 *et seq.*

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

Claimant and aggrieved employees are required to use their personal cell phones for work purposes, including downloading a timekeeping app. Claimant and aggrieved employees were also required to use their personal phones for work-related communications, although Employer did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Claimant and her coworkers were also required to purchase specific apparel to wear on the job which was also unreimbursed. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2698 *et seq.*)

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 timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). Employer required employees infected with COVID to come to work without regard for the health and safety of Claimant and aggrieved employees. Employees continued to work without distancing throughout the pandemic, and were employed under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code.

As a result of these practices, Employer has 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. Employer is liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

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

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *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 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked, and overtime, in addition to penalty wages.

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 and from identifying the true legal employer for purposes of asserting wage and hour claims. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', written over a horizontal line.

Nazo Koulloukian, Esq.
Attorneys for Claimant