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Attorneys for Plaintiff,
FRANCISCO ORTIZ 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 RIVERSIDE

FRANCISCO ORTIZ, an individual, on behalf
of himself, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiff,

vs.

PEACH HOME SERVICES, LLC, a California
limited liability company, GOETTL AIR
CONDITIONING AND PLUMBING, an
Arizona Corporation and DOES 1-50,
inclusive,

Defendant.

Case No.: **CVRI 2302496**

REPRESENTATIVE ACTION

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

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

4 NATURE OF THE ACTION

5 1. Plaintiff FRANCISCO ORTIZ worked as an employee for Defendants PEACH HOME
6 SERVICES, LLC and GOETTL AIR CONDITIONING AND PLUMBING and Does 1-50
7 (collectively “Defendant”). The defendants are air conditioning and plumbing companies. Plaintiff
8 FRANCISCO ORTIZ worked for Defendants as an HVAC installer from 2021 until 3/23/22, and
9 again from 6/23/22 until 12/6/22. Plaintiff brings this action pursuant to the Private Attorneys
10 General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All
11 current and former employees of Defendants within one year of serving notice on the LWDA to
12 the present are aggrieved employees.

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

22 3. Defendants have a consistent policy and/or practice of: (1) failing to comply with
23 California law concerning payment for all hours worked, including overtime hours worked; (2)
24 failing to provide timely, uninterrupted meal breaks and second meal breaks; (3) failing to provide
25 rest breaks; (4) failing to timely pay all wages owed; (5) failing to reimburse for required business
26 expenses; (6) failing to provide accurate itemized wage statements. Defendant is therefore liable
27 for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
28 (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

1 **THE PARTIES**

2 4. Plaintiff FRANCISCO ORTIZ is a resident of the State of California and worked for
3 Defendants as an HVAC installer from 2021 until 3/23/22, and again from 6/23/22 until 12/6/22.

4 5. Defendant PEACH HOME SERVICES, LLC is a California limited liability company
5 authorized to do business and doing business in California with the capacity to sue and to be sued,
6 and doing business, in the county of Riverside, State of California.

7 6. Defendant GOETTL AIR CONDITIONING AND PLUMBING is an Arizona
8 corporation authorized to do business and doing business in California with the capacity to sue and
9 to be sued, and doing business, in the county of Riverside, State of California.

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

15 8. 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 Defendant is legally attributable
21 to the other Defendants.

22 **JURISDICTION AND VENUE**

23 9. Venue is proper in this judicial district because Defendant conducts business in this
24 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
25 in this case that arose in this county.

26 10. 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 11. 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 12. 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 13. This representative action represents over one hundred current and former aggrieved
12 employees.

13 14. 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 15. 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 16. Defendants, and each of them (collectively referred to hereafter as "Defendant"), have
20 committed the following violations of the California Labor Code:

21 **Failure to Comply with California Law Concerning Payment of Lawful Wage For All**

22 **Hours Worked, Including Overtime Hours Worked**

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

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

26 18. The Wage Order defines "hours worked" as "the time during which an employee is
27 subject to the control of an employer, and including all the time the employee is suffered or
28 permitted to work, whether or not required to do so." Defendant has been engaged in many

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

3 19. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently missed
4 meal breaks, as discussed below. Although on some occasions Defendant would pay a penalty
5 payment, on other occasions, Defendant would modify the time records to automatically insert a
6 meal period when none was taken. Plaintiff and aggrieved employees were also required to
7 download Paylocity, a timekeeping and HR application, and communicate with Defendant during
8 unpaid time. This results in underpaid hours worked, resulting in failure to pay wages, including
9 overtime and minimum wages. Defendant has violated Labor Code §§510 1194, 1194.2, 1197,
10 1198, 1199 and Wage Order 16. Defendant is liable for civil penalties pursuant to Labor Code
11 §2698 *et seq.*

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

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

21 (Cal. Lab. Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*)

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

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

1 employ an employee for a work period of more than 10 hours per day without providing the
2 employee with a second meal period of not less than 30 minutes.”

3 23. Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work
4 during any meal... period mandated by an applicable order of the Industrial Welfare Commission.”
5 Wage Order 16 provides, in pertinent part, “[u]nless an employee is relieved of all duty during a
6 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
7 as time worked.” Labor Code §1198 makes it unlawful for an employer to employ an employee
8 for longer hours than those fixed by the wage order or under conditions of labor prohibited by the
9 order.

10 24. On many occasions, Plaintiff and aggrieved employees missed meal periods. Although
11 Defendant would occasionally pay a meal period penalty payment, on other occasions Defendant
12 would modify employee time records to insert a meal period when none was taken.

13 25. Defendant failed to assure Plaintiff and others take timely, off-duty, meal breaks of
14 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
15 §§226.7, 512, and 1198. As a derivative claim, Plaintiff alleges that pay statements were
16 inaccurate, failing to include all required meal period penalties, thus failing the requirements of
17 Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant
18 to Cal. Labor Code §558 and §2698 *et seq.*

19 **Failure to Provide Rest Breaks**

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

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

23 27. Defendant has failed to maintain a compliant rest period policy and practice that
24 provides its employees with off-duty rest periods as required by California law. Plaintiff reports
25 that he and his coworkers frequently missed rest periods due to the press of work.

26 28. Uninterrupted rest periods were not consistently provided or not scheduled before and
27 after a meal period for shifts greater than six hours, as prescribed by California law because
28 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;

1 (2) did not adequately inform and train employees about their rights to rest breaks and premium
2 payments for non-compliant rest breaks; (3) did not adequately inform and train employees about
3 when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because
4 Defendant did not staff enough people to schedule all timely and uninterrupted ten-minute rest
5 breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt
6 employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

7 29. Defendant did not authorize or permit all of its hourly employees to take at least a ten-
8 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
9 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 16-2001 11(A).
10 When breaks were missed Defendant failed to pay the 1-hour penalty, as required. Moreover,
11 although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the
12 disruption of continuous operations would jeopardize the product or process of the work,” even in
13 those instances, the missed rest period must be made up in that same day or the Defendant must
14 compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay.
15 Because Defendant violated the Wage Order, Defendant is liable under Labor Code §1198.

16 30. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.
17 Labor Code §558 and §2698 *et. seq*

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

19 (Cal. Labor Code §§201, 202 and 2698 *et seq.*)

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

22 32. Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract
23 for a definite period quits his or her employment, his or her wages shall become due and payable
24 not later than 72 hours thereafter.” An employee who is discharged must be paid all of his or her
25 wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of
26 Defendant’s unlawful employment practices as described herein, Defendant failed to pay
27 aggrieved employees who are no longer employed by Defendant all wages due in a timely manner
28 upon termination.

1 33. As set forth above, Defendant knowingly and willfully failed to pay all compensation
2 due and owing to aggrieved employees at the time employment terminated. Further knowing that
3 they were not being paid for all hours worked, including meal/rest periods and overtime pay.
4 Defendant willfully failed to pay employees who are no longer employed by it all compensation
5 due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to
6 §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to
7 Defendant's "willful" failure to comply with the statutory requirements of §§201 and 202 of the
8 Labor Code. Moreover, because Defendant violated §§201, 202 and 203, Defendant is liable for
9 civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

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

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

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

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

16 36. Plaintiff and aggrieved employees are required to use their personal cell phones for
17 work related tasks and communications, although Defendant did not reimburse them in any way
18 for the expense of their personal cell phone use as required by the Labor Code. Specifically,
19 Plaintiff and aggrieved employees were required to download the Paylocity app which is required
20 by Defendant to clock in and out. Plaintiff and aggrieved employees were also required to
21 download the Service Titan app which is used by customers to sign contracts and pay for services.
22 Plaintiff and aggrieved employees are also required to purchase and maintain their own tools
23 necessary to perform the assigned work. For example, Plaintiff purchased drills, a vacuum pump,
24 a torch, and electrical testing equipment, costing about \$3,000 in total. Additionally, Plaintiff was
25 required to use his personal car to travel between locations, sometimes as many as 3-4 locations
26 per day. He was not paid mileage for the use of his vehicle. Plaintiff and aggrieved employees
27 were all subject to these same unlawful conditions of employment. Accordingly, Defendant is
28 liable for civil penalties under PAGA §2699 *et seq.*

1 **Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records**

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

3 37. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporates said paragraphs herein by reference.

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

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

22 40. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
23 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
24 and 1174. As a result of the unlawful employment practices discussed herein, the statements
25 provided to Plaintiff and aggrieved employees have not accurately reflected actual gross wages
26 earned, including overtime and meal/rest premiums and total regular, overtime, and double time
27 hours worked. Additionally, Defendant includes sick pay, holiday pay, and vacation wages in the
28 total hours worked, resulting in a facially incorrect wage statement.

41. 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. Defendant's unlawful employment practices were knowing and intentional, and thus Defendant knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Defendant is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

FIRST CAUSE OF ACTION

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

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

43. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant 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 Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

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

45. 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.*);
- b. Failure to Provide Timely, Uninterrupted Meal Breaks and Second Meal Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*)
- c. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

1 d. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 2698 *et seq.*);

2 e. Failure to Reimburse Required Business Expenses (Cal. Labor Code §§1198, 2802,
3 2699 *et seq.*);

4 f. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate
5 Records (Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*).

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

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

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

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

23 50. At the time of each violation, Defendant employed one or more employees.

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

27 52. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
28 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and

1 Workforce Development Agency (“LWDA”) and served by certified mail upon Defendant,
2 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
3 that Defendant has violated. The LWDA did not respond to Plaintiff’s Notice within the statutory
4 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
5 §2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved
6 employees and the State of California.

7 **PRAYER FOR RELIEF**

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

- 10 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
11 determined at trial, but at least the jurisdictional amount of this Court;
- 12 2. An award of reasonable attorneys’ fees and costs pursuant to California Labor Code §2699(g)
13 and/or other applicable law;
- 14 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
15 law;
- 16 4. Pre-judgement and post-judgement interest as provided by law; and
- 17 5. Such other and further relief that the Court may deem just and proper.
- 18

19 DATED: May 12, 2023

KOUL LAW FIRM

LAW OFFICES OF SAHAG MAJARIAN II

21
22
23 

24 BY: Nazo Koulloukian, Esq.
25 Attorneys for Plaintiff FRANCISCO ORTIZ, and
26 all aggrieved employees
27
28

EXHIBIT 1



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P (213) 761 – 5484

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

March 8, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Peach Home Services, LLC
532 Malloy Ct.
Corona, CA 92880

Goettl Air Conditioning and Plumbing
532 Malloy Ct.
Corona, CA 92880

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Francisco Ortiz
Employer: Peach Home Services, LLC and Goettl Air Conditioning and
Plumbing

Dear Sir or Madam:

Francisco Ortiz has retained Nazo Koulloukian, Esq. of Koul Law Firm, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Peach Home Services, LLC and Goettl Air Conditioning and Plumbing (hereafter collectively referred to as “Employer.”)

Employer is an air conditioning and plumbing company where Claimant worked as an HVAC installer from 2021 until 3/23/22, and again from 6/23/22 until 12/6/22.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and 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.*)

The Wage Order 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.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently missed meal breaks, as discussed below. Although on some occasions Employer would pay a penalty payment, on other occasions, Employer would modify the time records to automatically insert a meal period when none was taken. Employees were also required to download Paylocity, a timekeeping and HR application, and communicate with Employer during unpaid time. This results in underpaid hours worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510, 1194, 1194.2, 1197, 1198, 1199 and Wage Order 16. 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.*)

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 16 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.

On many occasions, Claimant and aggrieved employees missed meal periods. Although Employer would occasionally pay a meal period penalty payment, on other occasions Employer would modify employee time records to insert a meal period when none was taken.

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 all 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.*

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 he and his coworkers frequently missed rest periods due to the press of work.

Uninterrupted rest periods were not consistently provided 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 Wage Order 16-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Moreover, although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work,” even in those instances, the missed rest period must be made up in that same day or the Employer must compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay. 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 §558 and §2698 *et. seq.*

Failure to Timely Pay All Wages Owed

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

Pursuant to Cal. Lab. Code § 202 (a), “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including meal/rest periods and overtime pay. 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. Pursuant to §203, aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

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 the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related tasks and communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Specifically, Claimant and aggrieved employees were required to download the Paylocity app which is required by Employer to clock in and out. Employees were also required to download the Service Titan app which is used by customers to sign contracts and pay for services. Employees are also required to purchase and maintain their own tools necessary to perform the assigned work. For example, Claimant purchased drills, a vacuum pump, a torch, and electrical testing equipment, costing about \$3,000 in total. Additionally, Claimant was required to use his personal car to travel between locations, sometimes as many as 3-4 locations per day. He was not paid mileage for the use of his vehicle. Accordingly, Employer is liable for civil penalties under PAGA §2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records
(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq*)

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

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

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

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

Sincerely,

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

Nazo Koulloukian, Esq.
Attorney for Claimant