THE NOURMAND
LAW FIRM, APC

8822 West Olympic Boulevard
Beverly Hills, California 90211

T. 310.553.3600
F. 310.553.3603
www.nourmandlawfirm.com

February 12, 2026

PAGA NOTICE AND FILING FEE
SUBMITTED ELECTRONICALLY

Department of Industrial Relations
Attn: Accounting Unit
455 Golden Gate Avenue, 10 Floor
San Francisco, California 94102

Re: California Labor Code § 2699 Notice Letter
On Behalf of Aggrieved Employee Rikki Sweet

Employer: Envoy Air, Inc.
4301 Regent Blvd. MD 243
Irving, Texas 75063

To whom it may concern:

This letter shall constitute Rikki Sweet's ("Mr. Sweet") notification under Labor Code § 2699.3 (hereinafter, "PAGA Notice"). The $75 filing fee was submitted electronically through the California Labor and Workforce Development Agency/Department of Industrial Relations' website for PAGA filings, along with a copy of this PAGA Notice.

The PAGA Notice concerns Mr. Sweet's allegations regarding the violations committed by his employer, Envoy Air, Inc. (collectively, "Employer"), against himself and all other similarly situated aggrieved employees. Mr. Sweet alleges that the conduct of Employer that engendered every violation that will be described herein was malicious, fraudulent, and/or oppressive.

Mr. Sweet alleges that Employer has a policy or practice of not compensating employees for all hours worked, including overtime wages, as a result of requiring employees to perform pre-shift and post-shift work without compensation, such as requiring employees to wait in line to clock in without being compensated. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission or by any applicable state or local law, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." The applicable Wage Orders obligate employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314, 324.

Additionally, Labor Code § 510 provides, in relevant part: "(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Mr. Sweet and other non-exempt hourly employees received other forms of remuneration, such as Shft2 Twu, which were not included in calculating the regular rate of pay for overtime purposes.

Mr. Sweet, who was employed as a Cabin Cleaner for Employer, contends that Employer had a policy or practice of not compensating employees, such as Mr. Sweet, overtime wages as a result of Employer requiring employees to perform pre-shift and post-shift work without compensation, such as requiring employees to wait in line to clock in without being compensated, and as described above, not including all forms of remuneration when calculating the regular rate of pay for Mr. Sweet and other non-exempt employees for overtime purposes. Wages are defined in Labor Code § 200 as "[a]ll amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." The DLSE Enforcement Policies and Interpretations Manual § 49 ("DLSE Manual") recognizes that hourly earnings, piecework earnings, commissions, and shift premiums are to be included in the definition of wages for purposes of calculating the regular rate of pay for purposes of overtime pay.

Here, Mr. Sweet contends that Employer would regularly require employees to perform pre-shift and post-shift work without compensation. Moreover, Mr. Sweet alleges that Employer failed in including all forms of remuneration when determining the regular rate of pay for Mr. Sweet and other non-exempt employees for overtime purposes. Consequently, Employer has violated the California Labor Code §§ 200, 510 and 1194 based on its practice of not paying employees for all earned overtime wages. Employer would also be liable for civil penalties pursuant to California Labor Code §§ 558 and 2698.

Mr. Sweet and other employees must be paid for all "hours worked." Hours worked is "the time during which an employees is subject to the control of an employer, and includes all the time an employee is suffered or permitted to work, whether or not required to do so." *See* Wage Order No. 9-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal. 4th 833. "[I]t is only necessary that the worker be subject to the control of the employer in order to be entitled to compensation." *Morillion v. Royal Packing Co.* 22 Cal. 4th 575, 584 (2000). An employee is under the employer's control and entitled to compensation when the employer "'directs, commands or restrains' an employee." *Morillion*, 22 Cal. 4th at 583 (citation omitted).

As held under *Morillion*, determining whether an employee's activity is under the employer's control entitling him or her to compensation depends on the level of control employers exert over employees during the activity: "The level of the employer's control, *rather than the mere fact that the employer requires the employees' activity is determinative.*" *Morillion*, 22 Cal.4th at 587 (emphasis added). In *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038, the holding in *Morillion* was reaffirmed. The court in *Frlekin* reasoned its decision by analyzing factors in determining whether an employer has exerted compensable control over employees:

> We also emphasize that whether an activity is required remained probative in determining whether an employee is subject to the employer's control. But, at least with regard to cases involving onsite employer control activities, the mandatory nature of an activity is not the only factor to consider. We conclude that courts may and should consider additional relevant factors—including, but not limited to, the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures—when evaluating such employer-controlled conduct.

To be free of the employer's control for purposes of "hours worked," the employee must be free to use his or her time "effectively for his or her own purposes." *Morillion*, 22 Cal.4th at 583.

<u>Labor Code</u> §1197.1 authorizes a civil penalty, restitution of wages, and liquidate damages for employees paid less than the minimum fixed by an applicable state or local law, or by an order of the commission, as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Employer failed to compensate Mr. Sweet and all aggrieved employees for all hours worked. Accordingly, through PAGA and to the extent permitted by law, Mr. Sweet and other employees are entitled to recover liquidated damages for violations of <u>Labor Code</u> § 1197.1. Based upon these same factual allegations, Mr. Sweet and other employees are entitled to penalties under <u>Labor Code</u> § 1199.

Similarly, <u>Labor Code</u> § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of <u>Labor Code</u> § 1194. When an employee, as Mr. Sweet and the other employees, are not paid for all hours worked under <u>Labor Code</u> § 1194, the employees may recover minimum wages for the time for which they received no compensation, as well as PAGA penalties for not having received pay for such time.

Consequently, Employer has violated California Labor Code §§ 200, 510, 1194, 1197, and 1197.1 based on its practice of not paying Mr. Sweet and other employees for all the work they performed under the control of Employer, including for all earned overtime wages. Employer would also be liable for civil penalties pursuant to California Labor Code §§ 558 and 2698.

Mr. Sweet further alleges that Employer maintains a policy or practice of compelling its employees to work in excess of 5 and 10 hours a day without being afforded uninterrupted 30 minute meal periods. Pursuant to Labor Code §§ 226.7, 512 and applicable Wage Orders, an employer is required to provide meal periods to its non-exempt employees or compensation in lieu thereof, i.e., premium wages. Here, Mr. Sweet and other non-exempt employees would be prevented and discouraged from taking their meal periods due to workplace interruptions and from being short-staffed. Mr. Sweet and other non-exempt employees were also not provided with second meal periods when they worked shifts greater than 10 hours in a day. Mr. Sweet was not paid premiums at the regular rate of pay for missed meal periods. Premiums for missed meal periods must be paid at the employee's regular rate of pay, encompassing both hourly wages and all nondiscretionary payments for work performed by the employee. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878 confirmed that the term "regular rate of compensation" in Labor Code § 226.7 has the same meaning as "regular rate of pay" in Labor Code § 510 and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee. This interpretation of Labor Code § 226.7 comports with the remedial purpose of the Labor Code and wage orders and with our general guidance that the state's labor laws are to be liberally construed in favor of worker protection. *Id.* Additionally, the application of this holding is applied retroactively. *Id.* at 880. Consequently, Employer has violated Labor Code §§ 226.7 and 512. Employer would also be liable for civil penalties pursuant to Labor Code §§ 558 and 2698.

Mr. Sweet also alleges that Employer maintains a policy or practice of compelling its employees to work over a four-hour period (or a major fraction thereof) without authorizing and permitting them to take a paid ten-minute rest period in which they were completely relieved of all their duties. Pursuant to Labor Code § 226.7 and applicable Wage Orders, an employer is required to provide rest periods to its non-exempt employees or compensation in lieu thereof. Furthermore, Mr. Sweet was not paid premium wages at the regular rate of pay for missed rest periods. Premiums for missed rest periods must also be paid at the employee's regular rate of pay, encompassing both hourly wages and all nondiscretionary payments for work performed by the employee. *Ferra,* 11 Cal.5th at 878. Consequently, Employer has violated Labor Code § 226.7. Employer would also be liable for civil penalties pursuant to Labor Code § 2698.

Mr. Sweet also alleges that Employer intentionally failed, and continues to fail, to furnish employees with itemized wage statements as required under California Labor Code § 226(a). The aforementioned statute requires that wage statements accurately provide the employer's address, all hours worked, the wages earned at all applicable hourly rates, the net and gross wages earned, and the premium wages due for missed meal and rest periods. Mr. Sweet and other employees also suffered legal "injury," for purposes of Labor Code § 226 (e), insofar as they were unable to readily and easily determine the requisite information under Labor Code § 226(a). For example, Mr. Sweet and other employees could not determine their hours worked, wages earned at all applicable hourly rates, and gross and net wages earned due to Employer requiring employees to perform pre-shift and post-shift work without compensation. Please also see *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal.App.5th 773, 788 (holding "a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)."); *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 679 (2018) (finding that the "requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a)"). Consequently, since Employer failed to comply with Labor Code § 226(a), Mr. Sweet and other similarly situated employees are entitled to recover penalties under Labor Code §§ 226(e) and 2698.

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial citation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226." Employer failed to provide Mr. Sweet and other employees with accurate itemized wage statements as indicated above. Consequently, since Employer failed to comply with Labor Code § 226(a), Mr. Sweet and other employees would be entitled to recover penalties under Labor Code §§ 226.3 and 2698, in lieu of the normal penalties provided for in Section 226.

Employer also failed and refused, and continues to fail and refuse, to timely pay compensation to Mr. Sweet and other similarly situated terminated or resigned employees, including but not limited to paying them all wages owed. Under Labor Code §§ 201 and 202, an employer must provide employees wages at discharge or within up to seventy-two (72) hours of resignation. Labor Code § 203 provides "if an employer willfully fails to pay... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty..." for up to thirty (30) days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492. In addition, Labor Code § 256 provides that the Labor Commissioner "shall impose a civil penalty in an amount not exceeding 30 days' pay" as waiting time under § 203's terms. Consequently, Employer is liable for waiting time penalties for their Labor Code §§ 201, 202, and 203 violations. Employer is also liable for civil penalties pursuant to Labor Code § 2698.

Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Due to Employer's failure to pay Mr. Sweet and other non-exempt employees on a timely and bi-monthly basis for all applicable wages, including overtime and premium wages for missed meal and rest periods (resulting from the faulty compensation practices described above), Employer failed to pay Mr. Sweet and other non-exempt employees all wages owed within 7 days of the close of the payroll period, in accordance with Labor Code § 204, on a regular and consistent basis. Labor Code § 210 (a) provides that "in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) for any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the postmark date of this notice whether your office intends to investigate the violations alleged herein. Our office understands that if we do not receive a response from your office within sixty-five (65) calendar days of the postmark date of this notice, Mr. Sweet may immediately thereafter pursue his interests and the interests of similarly situated aggrieved employees with a civil complaint against Employer for their violations of the Labor Code.

Sincerely,

/s/ Kimberly T. Maldonado
Kimberly T. Maldonado, Esq.
THE NOURMAND LAW FIRM, APC

cc: Envoy Air, Inc. (by U.S. Certified Mail)