

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/29/2023 at 04:18:24 PM

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ZINFORIANO ARISTEO DELGADO ARIZMENDI on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ZINFORIANO ARISTEO DELGADO
ARIZMENDI, an individual, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

DIAMOND ENVIRONMENTAL SERVICES,
LP, a California limited partnership and DOES
1-50, inclusive,

Defendant.

) Case No.: 37-2023-00051655-CU-OE-CTL

) **REPRESENTATIVE ACTION**

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

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

4 NATURE OF THE ACTION

5 1. Plaintiff ZINFORIANO ARISTEO DELGADO ARIZMENDI worked as an employee
6 for Defendant DIAMOND ENVIRONMENTAL SERVICES, LP, and Does 1-50 (collectively
7 “Defendant”). Defendant provides equipment rentals and onsite services. Plaintiff ZINFORIANO
8 ARISTEO DELGADO ARIZMENDI worked for Defendant as a as a local driver and general
9 laborer as an employee on an hourly, non-exempt basis from 2005 until December of 2022.
10 Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
11 Labor Code §2698 *et seq.*, on a representative basis. All current and former non-exempt hourly
12 employees of Defendant in California within one year of serving notice on the LWDA to the
13 present are aggrieved employees.

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

23 3. Defendant has had a consistent policy and/or practice of: (1) failing to comply with
24 California law concerning payment of lawful wage for all hours worked, including overtime hours
25 worked; (2) failing to pay wages at prevailing wage; (3) failing to include all earnings in regular
26 rate of pay to calculate overtime, sick pay and penalty wages; (4) failing to pay minimum wage;
27 (5) failing to pay all wages owed twice per month; (6) failing to provide timely meal breaks and
28 second meal breaks; (7) failing to provide rest breaks; (8) failing to reimburse for required business

1 expenses; (9) failing to provide accurate itemized wage statements; and (10) failing to provide
2 employee records upon request. Defendant is therefore liable for civil penalties under the Cal.
3 Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as
4 described more fully herein.

5 **THE PARTIES**

6 4. Plaintiff ZINFORIANO ARISTEO DELGADO ARIZMENDI is a resident of the State
7 of California and worked for Defendant from 2005 until December of 2022.

8 5. Defendant DIAMOND ENVIRONMENTAL SERVICES, LP is a California limited
9 partnership authorized to do business and doing business in California with the capacity to sue and
10 to be sued, and doing business, in the county of San Diego, State of California.

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

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

23 **JURISDICTION AND VENUE**

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

27 9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
28 the Superior Court and will be established according to proof at trial. Based on information,

1 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
2 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
3 (\$25,000).

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

8 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

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

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

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

20 15. Defendant, and each of them, has committed the following violations of the California
21 Labor Code:

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

23 **Hours Worked, Including Overtime Hours Worked**

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

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

27 17. The Wage Orders define "hours worked" as "the time during which an employee is
28 subject to the control of an employer, and includes all the time the employee is suffered or

1 permitted to work, whether or not required to do so.” When employees like Plaintiff and his
2 coworkers do not receive payment for all hours worked as a result of unlawful employment
3 practices, including requiring off the clock work and failure to properly calculate overtime and
4 penalty wages, the result is that they are earning less than the statutory minimum wages for all
5 hours worked.

6 18. Off the clock work. Plaintiff and his coworkers were required to arrive to work early
7 and perform pre-shift activities prior to clocking in. For example, Plaintiff was required to arrive
8 at the company’s yard early and conduct a walkthrough around his assigned company truck for
9 safety which took him approximately 10 minutes, all before clocking in. Then he was required to
10 walk 2-3 minutes to the timeclock. Defendant also performed Covid-19 temperature checks off the
11 clock.

12 19. As described below, Defendant has also failed to pay the required minimum wage for
13 all hours worked and has failed to pay all wages owed twice per month.

14 20. Plaintiff and aggrieved employees have been employed under conditions prohibited by
15 the wage order, and thus Defendant has also violated §§1198 and 1199. Defendant is liable for
16 civil penalties pursuant to Labor Code §§558 and 2699 *et seq*

17 **Failure to Pay Wages at the Prevailing Wage**

18 (Cal. Lab. Code §§510, 558, 1194, 1197, 1197.1, 1770-1773.1, 2699 *et seq.*)

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

21 22. The California Labor Code Section 1770, *et seq.*, requires contractors on public works
22 projects to pay their workers based on prevailing wage rates established and issued by the
23 Department of Industrial Relations, Division of Labor Statistics and Research. §1771 requires
24 employers to ascertain and comply with all general prevailing wage rates for crafts and any rate
25 changes that occur during the lifetime of the contract.

26 23. Defendant has numerous contracts with public works projects yet fails to pay the
27 required minimum prevailing wage for all workers and trades. Defendant is liable for civil
28 penalties pursuant to Labor Code §§558 and 2699 *et seq.*

1 **Failure to Include All Earnings in Regular Rate of Pay to Calculate Overtime, Sick Pay,**
2 **and Penalty Wages**

3 (Cal. Labor Code §§510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

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

6 25. Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by
7 employees of every description, whether the amount is fixed or ascertained by the standard of time,
8 task, piece, commission basis, or other method of calculation.”

9 26. Defendant paid additional wages including nondiscretionary bonuses and additional
10 wages including Safety Incentive bonuses and Fringe Benefits to Plaintiff and aggrieved
11 employees but failed to include the additional pay when calculating the regular rate of pay for
12 purposes of calculating overtime, meal and rest period premiums, and sick pay.

13 27. It is well established that these additional earnings increase the employee’s “regular
14 rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is
15 calculated by dividing the hours worked in a week by all the compensation earned for that week.
16 When an employee is later paid a bonus or paid a higher rate of pay that is partly due to work
17 performed in that week, this additional pay must be added into the total compensation for the week,
18 increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169
19 CA4th 804, 807.)

20 28. Defendant did not make any adjustments to overtime, sick pay, or penalty pay rates to
21 incorporate the additional pay, and this failure is reflected in Plaintiff and aggrieved employees’
22 paystubs. Plaintiff and other employees have been denied “the unpaid balance of the full amount
23 of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Defendant
24 has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
25 Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation
26 of the labor code to fail to comply with a wage order. Defendant is liable for civil penalties pursuant
27 to Cal. Labor Code §558 and 2698 *et seq.*
28

(Cal. Labor Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

30. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

31. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a result of Defendant's practices described above. Based on Defendant's unlawful conduct described above, Plaintiff and aggrieved employees have been required to work off the clock and have been paid zero wages for that time, clearly resulting in failure to pay for all hours worked, including overtime, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

(Cal. Labor Code §§204, 210, and 2698 *et seq.*)

33. Defendant was required to pay Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

34. Defendant 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.

35. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

1 **Failure to Provide Timely Meal Breaks and Second Meal Breaks**

2 (Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders)

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

5 37. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
6 period of more than five hours per day without providing the employee with a meal period of not
7 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee
8 to work during any meal... period mandated by an applicable order of the Industrial Welfare
9 Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee
10 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
11 duty’ meal period and counted as time worked.”

12 38. In this case, Plaintiff and his coworkers frequently missed second meal periods, and
13 first and second meal periods were often interrupted and noncompliant. Plaintiff worked numerous
14 shifts well in excess of 10 hours with no second meal period.

15 39. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
16 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
17 (2) did not adequately inform and train employees about their rights to meal periods and premium
18 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
19 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
20 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
21 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
22 refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because
23 Defendant unlawfully rounded clock in and clock out times for meal periods. Plaintiff and
24 aggrieved employees were not paid a premium payment, paid as an hour’s wage when meal periods
25 were not given to them in compliance with California law.

26 40. The Wage Orders require employers to authorize and permit employees to take an
27 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
28 §1198, “the employment of any employee... under conditions of labor prohibited by the order is

1 unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
2 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
3 §226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for
4 noncompliant meal periods. As a derivative claim, Plaintiff alleges that his pay statements were
5 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
6 Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to
7 Cal. Labor Code §558 and §2698 *et. seq.*

8 **Failure to Provide Rest Breaks**

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

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

12 42. Defendant has failed to maintain a policy and practice that provides or permits its
13 employees to take off-duty rest periods as required by California law. Plaintiff and aggrieved
14 employees are entitled to at least a ten-minute rest period in which they are relieved of all duties,
15 as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Plaintiff explains that he and his
16 coworkers frequently missed rest periods. On many occasions, no breaks were provided.

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

24 44. Rest periods were not provided or not scheduled before and after a meal period for
25 shifts greater than six hours, as prescribed by California law because Defendant: (1) did not
26 account for all hours worked that were unaccounted for on their timecard; (2) did not adequately
27 inform and train employees about their rights to rest breaks and premium payments for non-
28 compliant rest breaks; (3) did not adequately inform and train employees about when, where and

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

5 45. Defendant failed to pay Plaintiff and similarly situated employees the premium
6 compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest
7 periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. As a derivative
8 claim, Plaintiff alleges that his pay statements were inaccurate, failing to include required rest
9 period penalties, thus failing the requirements of Labor Code §226(a).

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

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

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

14 47. Labor Code §2802 requires employers to indemnify employees for necessary
15 expenditures or losses incurred by employees in direct consequence of discharge of duties. Here,
16 although Defendant often provided employees with company phones, Plaintiff and aggrieved
17 employees were sometimes required to use their personal cell phones for work purposes, including
18 clocking in and out for meal periods. Defendant failed to reimburse Plaintiff or aggrieved
19 employees for any of the above expenses.

20 **Failure to Provide Accurate Itemized Wage Statements**

21 (Cal. Lab. Code §§226, 1174, 2699 *et seq.*)

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

24 49. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
25 wage statements to Plaintiff and the aggrieved employees, as well as maintain accurate records, in
26 accordance with Labor Code §§ 226 and 1174. The statements provided to Plaintiff and aggrieved
27 employees have not accurately reflected actual gross wages earned, the correct number of overtime
28

1 and double time hours worked, and meal and rest penalties among other deficiencies derivative of
2 the claims above.

3 50. Wage statements fail to state the total hours worked. Such failures caused injury to
4 Plaintiff and others, by, among other things, impeding them from knowing the total hours worked
5 and the amount of wages to which they are and were entitled.

6 51. Defendant issued and maintained inaccurate wage statements and records and is liable
7 for civil penalties pursuant to Labor Code § 2699 *et seq*

8 **Failure to Provide Employee Records Upon Request**

9 (Cal. Lab. Code §§226(b)-(c), 432, 1198.5, 2699 *et seq.*)

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

12 53. Defendant knowingly and intentionally failed to provide his written employment
13 records to Plaintiff despite numerous requests in violation of Cal. Labor Code §§ §§226(b)-(c),
14 432, and 1198.5. Plaintiff requested his records in January of 2023, and again in March of 2023,
15 yet to date, Defendant has never produced the required records and is liable for civil penalties
16 pursuant to Labor Code § 2699 *et seq.* Defendant fails and refuses to produce records to aggrieved
17 employees as required.

18 **FIRST CAUSE OF ACTION**

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

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

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

23 55. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
24 during the applicable statutory period and suffered one or more of the Labor Code violations set
25 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
26 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
27 attorneys’ fees and costs.
28

1 56. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

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

- 6 a. Failure to Comply with California Law Concerning Payment of Lawful Wage For
7 All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218,
8 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)
- 9 b. Failure to Pay Wages at the Prevailing Wage (Cal. Labor Code §§510, 558, 1194,
10 1197, 1197.1, 1770-1773.1, 2699 *et seq.*)
- 11 c. Failure to Include All Earnings in Regular Rate of Pay to Calculate Overtime, Sick
12 Pay, and Penalty Wages (Cal. Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198,
13 2699 *et seq.*)
- 14 d. Failure to Pay Minimum Wage (Cal. Labor Code §§200, 218.5, 226, 558, 1194,
15 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- 16 e. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code §§204, 210,
17 and 2698 *et seq.*)
- 18 f. Failure to Provide Timely Meal Breaks and Second Meal Breaks (Cal. Labor Code
19 §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)
- 20 g. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
21 2698 *et seq.*)
- 22 h. Failure to Reimburse For Required Business Expenses (Cal. Labor Code §§1198,
23 2802, 2699 *et seq.*)
- 24 i. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226,
25 1174, 2699 *et seq.*)
- 26 j. Failure to Provide Employee Records Upon Request (Cal. Labor Code §§226(b)-
27 (c), 432, 1198.5, 2699 *et seq.*)

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

5 59. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
6 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
7 for each underpaid employee for each pay period for which the employee was underpaid, and one
8 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
9 for which the employee was underpaid.

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

14 61. Plaintiff and the other current and former employees of Defendant are aggrieved
15 employees. They were or are employed by Defendant, and each of them, and the violations alleged
16 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
17 current and former aggrieved employees.

18 62. At the time of each violation, Defendant employed one or more employees.

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

22 64. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
23 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
24 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
25 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
26 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
27 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
28

§2699.3, Plaintiff may now pursue his PAGA claims in this action on behalf of aggrieved employees and the State of California.

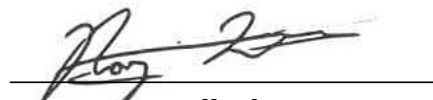
PRAYER FOR RELIEF

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

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

DATED: November 29, 2023

KOUL LAW FIRM



BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiff ZINFORIANO ARISTEO
DELGADO ARIZMENDI, and all aggrieved
employees

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

September 21, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Diamond Environmental Services, LP
807 East Mission Road
San Marcos, CA 92069

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Zinforiano Aristeo Delgado Arizmendi
Employer: Diamond Environmental Services, LP

Dear Sir or Madam:

Zinforiano Aristeo Delgado Arizmendi (“Claimant”) has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employer, Diamond Environmental Services, LP, a California limited partnership (hereafter “Employer”).

Claimant worked for Employer from 2005 until December of 2022, as a local driver and general laborer.

Due to unlawful conditions of employment, Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and Development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

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

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers do not receive payment for all hours worked as a result of unlawful employment practices, including requiring off the clock work and failure to properly calculate overtime and penalty wages, the result is that they are earning less than the statutory minimum wages for all hours worked.

Off the clock work. Claimant and his coworkers were required to arrive to work early and perform pre-shift activities prior to clocking in. For example, Claimant was required to arrive at the company’s yard early and conduct a walkthrough around his assigned company truck for safety which took him approximately 10 minutes, all before clocking in. Then he was required to walk 2-3 minutes to the timeclock. Employer also performed Covid-19 temperature checks off the clock.

As described below, Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages at the Prevailing Wage

(Cal. Labor Code §§510, 558, 1194, 1197, 1197.1, 1770-1773.1, 2699 *et seq.*)

The California Labor Code Section 1770, *et seq.*, requires contractors on public works projects to pay their workers based on prevailing wage rates established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research. §1771 requires employers to ascertain and comply with all general prevailing wage rates for crafts and any rate changes that occur during the lifetime of the contract.

Employer has numerous contracts with public works projects yet fails to pay the required minimum prevailing wage for all workers and trades. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Include All Earnings in Regular Rate of Pay to Calculate Overtime, Sick Pay, and Penalty Wages

(Cal. Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all 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.”

Employer paid additional wages including nondiscretionary bonuses and additional wages including Safety Incentive bonuses and Fringe Benefits to Claimant and aggrieved employees but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime, meal and rest period premiums, and sick pay.

It is well established that these additional earnings increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime, sick pay, or penalty pay rates to incorporate the additional pay, and this failure is reflected in Claimant and aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer’s practices described above. Based on Employer’s unlawful conduct described above, Claimant and aggrieved employees have been required to work off the

clock and have been paid zero wages for that time, clearly resulting in failure to pay for all hours worked, including overtime, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

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 these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Provide Timely Meal Breaks and Second Meal Breaks

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

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 of the Wage Order 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.”

In this case, Claimant and his coworkers frequently missed second meal periods, and first and second meal periods were often interrupted and noncompliant. Claimant worked numerous shifts well in excess of 10 hours with no second meal period.

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; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a

lawfully compliant meal period policy; and/or (6) because Employer unlawfully rounded clock in and clock out times for meal periods. 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.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee... under conditions of labor prohibited by the order is unlawful." Employer failed to permit Claimant and others to 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 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are 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 policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Claimant explains that he and his coworkers frequently missed rest periods. On many occasions, no breaks were provided.

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

Rest periods were not 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 failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal.

Failure to Reimburse For Required Business Expenses

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

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of discharge of duties. Here, although Employer often provided employees with company phones, Claimant and aggrieved employees were sometimes required to use their personal cell phones for work purposes, including clocking in and out for meal periods. Employer failed to reimburse Claimant or aggrieved employees for any of the above expenses.

Failure to Provide Accurate Itemized Wage Statements

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct number of overtime and double time hours worked, and meal and rest penalties among other deficiencies derivative of the claims above.

Wage statements fail to state the total hours worked. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employer issued and maintained inaccurate wage statements and records and is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Failure to Provide Employee Records Upon Request

(Cal. Labor Code §§226(b)-(c), 432, 1198.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide his written employment records to Claimant despite numerous requests in violation of Cal. Labor Code §§ 226(b)-(c), 432, and 1198.5. Claimant requested his records in January of 2023, and again in March of 2023, yet to date, Employer has never produced the required records and is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Attorney for Claimant