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Attorneys for Plaintiffs,
RODOLFO CHAN, MATTHEW PEREZ, AND JOSE VACA on behalf of
themselves, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

RODOLFO CHAN, MATTHEW PEREZ,
AND JOSE VACA, individuals, on behalf of
themselves, all aggrieved employees, and the
State of California as a Private Attorneys
General,

Plaintiffs,

vs.

DSV AIR & SEA, INC., a Delaware
corporation, and DOES 1-50, inclusive,

Defendant.

) Case No.: **24STCV06592**

) **REPRESENTATIVE ACTION**

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

Plaintiffs RODOLFO CHAN, MATTHEW PEREZ, and JOSE VACA bring this PAGA
representative action complaint on behalf of themselves, all aggrieved employees, and the State of
California as a Private Attorneys General, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiffs RODOLFO CHAN, MATTHEW PEREZ, and JOSE VACA worked as an
employee for Defendant DSV AIR & SEA, INC. and Does 1-50 (collectively "Defendant").

1 Defendant is a transport and logistics company. Plaintiffs RODOLFO CHAN, MATTHEW
2 PEREZ, and JOSE VACA worked for Defendant in their global transport and logistics company.
3 Plaintiffs bring this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal.
4 Labor Code §2698 *et seq.*, on a representative basis. All current and former employees of
5 Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

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

15 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
16 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to pay all
17 wages owed twice per month; (4) failing to timely pay all wages owed; (5) failing to provide lawful
18 meal breaks; (6) failing to provide rest breaks; (7) failing to provide suitable seating; (8) failing to
19 reimburse for required business expenses; (9) failing to provide accurate itemized wage statements.
20 Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private
21 Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

22 THE PARTIES

23 4. Plaintiff RODOLFO CHAN is a resident of the State of California and worked for
24 Defendant during the statutory period.

25 5. Plaintiff MATTHEW PEREZ is a resident of the State of California and worked for
26 Defendant during the statutory period.

27 6. Plaintiff JOSE VACA is a resident of the State of California and worked for Defendant
28 during the statutory period.

7. Defendant DSV AIR & SEA, INC. is a Delaware corporation authorized to do business and doing business in California with the capacity to sue and to be sued, and doing business, in the county of Los Angeles, State of California.

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

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

JURISDICTION AND VENUE

10. Venue is proper in this judicial district because Defendant conducts business in this county and each Defendant has legal obligations to Plaintiffs and many of the aggrieved employees in this case that arose in this county.

11. The statutory penalties sought by Plaintiffs exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiffs allege that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

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

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

5 14. This representative action represents over one hundred current and former hourly,
6 nonexempt aggrieved employees.

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

10 16. Plaintiffs and all current and former hourly nonexempt employees within one year of
11 filing the PAGA Notice letter with the LWDA to the present are aggrieved employees within the
12 meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

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

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

16 **Hours Worked, Including Overtime Hours Worked**

17 (Cal. Labor Code §§207, 218, 246, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

18 18. Plaintiffs reassert and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 19. The Wage Orders define “hours worked” as “the time during which an employee is
21 subject to the control of an employer, and includes all the time the employee is suffered or
22 permitted to work, whether or not required to do so.” When employees like Plaintiffs and their
23 coworkers do not receive payment for all hours worked as a result of unlawful employment
24 practices, including requiring employees to wait in long lines to clock in and work when clocked
25 out for meal periods, the result is that they are earning less than the statutory minimum wages for
26 all hours worked.

27 20. Defendant further failed to pay overtime, penalty pay, and sick leave wages at the
28 regular rate of pay.

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

4 **Failure to Pay Minimum Wage**

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

6 22. Plaintiffs reassert and realleges all preceding paragraphs as if fully set forth and
7 incorporate said paragraphs herein by reference.

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

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

17 **Failure to Pay All Wages Owed Twice Per Month**

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

19 25. Plaintiffs reassert and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

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

23 27. Defendant failed to pay all wages earned to employees as a result of the unlawful
24 employment policies and practices discussed herein. As a result of these practices, employees were
25 underpaid for hours worked, including overtime and penalty wages, and this underpayment
26 resulted in a failure to pay all wages owed twice per month.

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

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1 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
2 duty’ meal period and counted as time worked.”

3 34. In this case, Plaintiffs and their coworkers experienced noncompliant meal periods. Mr.
4 Chan explains that meal periods were interrupted because he and other employees were required
5 to carry their radios and phones and be accessible at all times, even during unpaid meal periods.
6 Plaintiffs also complain of late, short, and missed meal periods. Plaintiffs were often not permitted
7 to take second meal periods when they work shifts in excess of ten hours.

8 35. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
9 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
10 (2) did not adequately inform and train employees about their rights to meal periods and premium
11 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
12 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
13 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
14 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
15 refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because
16 Defendant required employees to carry radios and mobile phones used to interrupt unpaid meal
17 periods.

18 36. The Wage Orders require employers to authorize and permit employees to take an
19 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
20 §1198, “the employment of any employee... under conditions of labor prohibited by the order is
21 unlawful.” Defendant failed to permit Plaintiffs and others to take timely, off-duty, meal breaks of
22 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
23 §§226.7 and 512. Defendant failed to pay all required penalty pay to Plaintiffs and aggrieved
24 employees for noncompliant meal periods. As a derivative claim, Plaintiffs alleges that pay
25 statements were inaccurate, failing to include all required meal period penalties, thus failing the
26 requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil
27 penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*
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1 B. When employees are not engaged in the active duties of their employment and
2 the nature of the work requires standing, an adequate number of suitable seats
3 shall be placed in reasonable proximity to the work area and employees shall
4 be permitted to use such seats when it does not interfere with the performance
5 of their duties.

6 44. At all relevant times, Defendant failed to provide Plaintiffs and aggrieved employees
7 with suitable seating during their employment as required by the Wage Order. Plaintiffs and other
8 aggrieved employees were not provided with seating during shifts in which they worked at
9 positions which would reasonably permit the use of seating, nor was seating provided within a 3-
10 4 minute walk from work areas or in reasonable proximity to use when it does not interfere with
11 the performance of duties. Accordingly, Plaintiffs, on behalf of themselves and aggrieved
12 employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies
13 to the extent allowed by law for the alleged violations.

14 **Failure To Reimburse for Required Business Expenses**

15 (Lab. Code section 1198, 2802, 2699 *et seq.*)

16 45. Plaintiffs reassert and realleges all preceding paragraphs as if fully set forth and
17 incorporate said paragraphs herein by reference.

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

20 47. Defendant required employees to use their personal smartphones for work purposes on
21 a daily basis. For example, employees were often called on their personal phones whether on or
22 off the clock. Plaintiffs were also expected to promptly review and respond to emails written to
23 their work email accounts which required access from their smartphones. Plaintiffs were also
24 required to take photos, create records involving pictures, send emails, and answer calls from
25 truckers and other employees from their personal phones. Plaintiff Vaca was required to use his
26 personal phone to take photos to such an extent that it necessitated purchasing a separate camera
27 for work purposes only.
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48. In addition to phone use, employees were required to purchase specific steel-toed boots and tools at their own expense, and occasionally drive personal vehicles without reimbursement for mileage. Accordingly, Defendant is liable for civil penalties under PAGA §2698 *et seq.*

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

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

49. Plaintiffs reassert and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

50. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiffs and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to employees are inaccurate for many reasons derivative of the claims above, including failure to state accurate total hours worked, meal and rest period penalties, and reimbursements. Defendant issued and maintained inaccurate wage statements and records and 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.*)

51. Plaintiffs reassert and reallege all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

52. Plaintiffs are “aggrieved employees” 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, Plaintiffs seek to recover on behalf of themselves and all other current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs.

53. Plaintiffs seek 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.

1 54. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor
2 Code provisions:

- 3 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
4 Labor Code §§207, 218, 246, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);
- 5 b. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194,
6 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- 7 c. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and
8 2698 *et seq.*)
- 9 d. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201-203 and 2698 *et*
10 *seq.*)
- 11 e. Failure to Provide Lawful Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512,
12 558, 1198, 2698 *et seq.*)
- 13 f. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198,
14 2698 *et seq.*)
- 15 g. Failure to Provide Suitable Seating (Cal. Labor Code §§ 1198 and Wage Order 1-
16 2001, Section 14)
- 17 h. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§ 1198,
18 2802 and 2699 *et seq.*)
- 19 i. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
20 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*).

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

25 56. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
26 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
27 for each underpaid employee for each pay period for which the employee was underpaid, and one
28

1 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
2 for which the employee was underpaid.

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

7 58. Plaintiffs and the other current and former employees of Defendant are aggrieved
8 employees. They were or are employed by Defendant, and each of them, and the violations alleged
9 herein were committed against them. Plaintiffs bring this action on behalf of themselves and all other
10 current and former aggrieved employees.

11 59. At the time of each violation, Defendant employed one or more employees.

12 60. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
13 them, Plaintiffs and aggrieved employees are entitled to civil penalties in an amount to be
14 determined at trial, pre-judgment interest, costs and attorneys' fees.

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

23 **PRAYER FOR RELIEF**

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

26 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
27 determined at trial, but at least the jurisdictional amount of this Court;
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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: March 15, 2024

KOUL LAW FIRM, APC


BY: Nazo Koulloukian, Esq.
Attorneys for Plaintiffs RODOLFO CHAN,
MATTHEW PEREZ, AND JOSE VACA, and all
aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 10, 2024

Via E-filing:

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

Via Certified U.S. Mail:

DSV AIR & SEA, INC.
200 Wood Avenue S
Suite 300
Iselin, NJ 08830

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Rodolfo Chan, Matthew Perez, and Jose Vaca
Employer: DSV AIR & SEA, INC.

Dear Sir or Madam:

Rodolfo Chan, Matthew Perez, and Jose Vaca (“Claimants”) have retained Nazo Koulloukian, Esq. of the Koul Law Firm to represent them, and all other aggrieved employees, for conditions of employment and wage and hour claims against their former employer, DSV AIR & SEA, INC. (hereafter “Employer”).

Claimants worked for Employer as hourly, nonexempt employees, and each experienced California Labor Code violations during the statutory period.

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 Claimants 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 under 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 §§207, 218, 246, 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 Claimants and their coworkers do not receive payment for all hours worked as a result of unlawful employment practices, including requiring employees to wait in long lines to clock in and work when clocked out for meal periods, the result is that they are earning less than the statutory minimum wages for all hours worked.

Employer further failed to pay overtime, penalty pay, and sick leave wages at the regular rate of pay.

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 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 Claimants and aggrieved employees for all hours worked as a result of Employer’s practices described above. Based on Employer’s unlawful conduct described above, Claimants 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 Claimants 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 Timely Pay All Wages Owed

(Cal. Lab. Code §§201-203 and 2698 *et seq.*)

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing, including payment for all hours worked, and penalty pay, to Claimants at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimants and similarly situated individuals 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.*

Claimants believe that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §§201-203. Claimants will seek restitution pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Provide Lawful 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, Claimants and their coworkers experienced noncompliant meal periods. Mr. Chan explains that meal periods were interrupted because he and other employees were required to carry their radios and phones and be accessible at all times, even during unpaid meal periods. Employees also complain of late, short, and missed meal periods. Employees were often not permitted to take second meal periods when they work shifts in excess of ten hours.

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 required employees to carry radios and mobile phones used to interrupt unpaid meal periods.

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 Claimants 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 failed to pay all required penalty pay to Claimants and aggrieved employees for noncompliant meal periods. As a derivative claim, Claimants 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, 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.

Rest breaks were often noncompliant because employees were required to respond to calls on their radios and personal phones at all times, even during break. Employees working alone in their department were not consistently provided relief to permit rest breaks. Employer also failed to permit third rest breaks when required.

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

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Order 1-2001, Section 14)

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

The Wage Order provides that:

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

At all relevant times, Employer failed to provide Claimants and aggrieved employees with suitable seating during their employment as required by the Wage Order. Claimants and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 3-4 minute walk from work areas or in reasonable proximity to use when it does not interfere with the performance of duties. Accordingly, Claimants, on behalf of themselves and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

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.

Employer required employees to use their personal smartphones for work purposes on a daily basis. For example, employees were often called on their personal phones whether on or off the clock. Employees were also expected to promptly review and respond to emails written to their work email accounts which required access from their smartphones. Employees were also required to take photos, create records involving pictures, send emails, and answer calls from truckers and other employees from their personal phones. Claimant Vaca was required to use his personal phone to take photos to such an extent that it necessitated purchasing a separate camera for work purposes only.

In addition to phone use, employees were required to purchase specific steel-toed boots and tools at their own expense, and occasionally drive personal vehicles without reimbursement for mileage. Accordingly, Employer is liable for civil penalties under PAGA §2698 *et eq.*

**Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping
Requirements**
(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to employees are inaccurate for many reasons derivative of the claims above, including failure to state accurate total hours worked, meal and rest period penalties, and reimbursements. Employer issued and maintained inaccurate wage statements and records and is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

Conclusion

Employer has violated a number of California wage and hour laws. Claimants respectfully request that the agency investigate the above allegations and hereby provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request that the agency inform them if it does not intend to investigate these violations so that they may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimants