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JOSE MANUEL MARTINEZ,  
and all putative class members

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

JOSE MANUEL MARTINEZ, an individual,  
on behalf of himself and all others similarly  
situated,

Plaintiff,

vs.

PHENIX TRUCK BODY MANAGEMENT, a  
California corporation, and SAFE VEHICLE  
SYSTEMS, INC., a California corporation, and  
DOES 1-50, inclusive,

Defendant.

Case No.: 24STCV05558

**FIRST AMENDED CLASS AND  
REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- 1. Failure to Pay all Hours Worked,  
including Overtime**
- 2. Failure to Pay Minimum Wage**
- 3. Failure to Pay Wages Twice Per  
Month**
- 4. Rest Break Violations**
- 5. Meal Break Violations**
- 6. Failure to Reimburse for Required  
Business Expenses**
- 7. Failure to Provide Accurate Itemized  
Wage Statements & Violation of  
Record Keeping Requirements**
- 8. Unlawful Business Practices  
Bus & Prof. Code §17200**
- 9. Private Attorneys General Act  
Penalties (Lab. Code §2699)**

**JURY TRIAL DEMANDED**

**FILED**  
Superior Court of California  
County of Los Angeles

05/06/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Lozano Deputy

1 Plaintiff JOSE MANUEL MARTINEZ, individually, and on behalf of all others similarly  
2 situated, all aggrieved employees, and as a Private Attorney General for the State of California  
3 (collectively “Plaintiff”), alleges as follows:

#### 4 NATURE OF THE ACTION

5 1. This is an employment class and representative action on behalf of over 100 hourly, non-  
6 exempt employees against their employer for violations of numerous wage and hour laws. Plaintiff  
7 brings this employment class action complaint on behalf of himself, and all others similarly  
8 situated, all aggrieved employees, and as a Private Attorney General for the State of California  
9 against PHENIX TRUCK BODY MANAGEMENT and SAFE VEHICLE SYSTEMS, INC., and  
10 DOES 1-50, inclusive, (hereafter collectively “Defendant” or “Defendants”).

11 2. Plaintiff is a current employee of Defendants PHENIX TRUCK BODY  
12 MANAGEMENT and SAFE VEHICLE SYSTEMS, INC., where he works on an hourly,  
13 nonexempt basis. Plaintiff and the proposed class earn at or near minimum wage.

14 3. As described further below, Defendants have violated the California Labor Code by (1)  
15 failing to pay for all hours worked, including overtime hours worked (§200, 204, 206, 206.5, 210,  
16 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198); (2) failing to pay minimum  
17 wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (3) failing to pay wages  
18 twice per month (§204, 210); (4) failing to provide rest breaks and cool-down rest periods (§226,  
19 226.7, 512, 558, 1198); (5) failing to provide uninterrupted meal breaks (§226, 226.7, 512, 558,  
20 1198); (6) failing to reimburse for required business expenses (§1198, 2802); (7) failing to provide  
21 accurate itemized wage statements and violating record keeping requirements (§226, 1174,  
22 1174.5); (8) unlawful and unfair business practices (Bus. & Prof. Code §17200, et. seq.); and (9)  
23 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. Attorney  
24 General Act (“PAGA”), Labor Code §2698 et seq.

25 4. The class claims in this action are brought pursuant to Code of Civil Procedure (“CCP”)  
26 §382, seeking recovery for unpaid wages, including overtime wages, missed meal and rest period  
27 penalty pay, statutory and waiting time penalties, injunctive and other equitable relief, interest, and  
28 reasonable attorneys’ fees and costs. Pursuant to the class and representative action procedures

provided for under California law, Plaintiff, on behalf of himself, proposed Class Members (also referred to as “Class”) and aggrieved employees, also seeks injunctive relief and restitution of all benefits Defendants have received from their unlawful actions as alleged herein. Plaintiff has also provided notice of these claims pursuant to §2698 et. seq., to the Labor and Workforce and Development Agency (“LWDA”) and now brings this First Amended Complaint, including claims for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 et seq. Attorney General Act (“PAGA”), Labor Code §2698 et seq.

5. The “Class Period” is designated as the four years before the filing of this Complaint through the date of the final disposition of this action. From the start of the Class Period through the present, Defendants have had a policy and/or practice of among other violations: late and/or interrupted meal breaks, untimely and/or interrupted rest breaks, issuing inaccurate wage statements, and ignoring and violating California wage and hour laws, in their business as more fully set forth below.

6. The “PAGA Period” is defined herein commences one year prior to the date of filing the PAGA Notice letter with the LWDA.

7. Defendants have treated all persons employed in California in such a way as to violate California’s laws governing conditions of employment and payment of wages owed. Plaintiff asserts that Defendants have knowingly and with conscious disregard of the law refused to pay the Class Members and aggrieved employees all wages owed, including overtime wages and meal and rest break penalty wages. Defendants have violated numerous Labor Code provisions, as set forth herein. Class Members and aggrieved employees are owed their back pay, plus interest and/or premiums and penalties under Business and Professions Code section 17203 to compensate Class Members and aggrieved employees for the delay in receiving wages due.

8. Defendants, by and through their actions, have engaged in unfair competition, requiring restitution to persons affected and disgorgement of profits so obtained.

#### **THE PARTIES**

9. Plaintiff JOSE MANUEL MARTINEZ is an individual who resides in California and worked for Defendant.

10. Defendant PHENIX TRUCK BODY MANAGEMENT, is a California limited liability company doing business in California with the capacity to sue and to be sued and doing business, in Los Angeles County, State of California. Defendant exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class and aggrieved employees throughout the liability period.

11. Defendant SAFE VEHICLE SYSTEMS, INC., is a California limited liability company doing business in California with the capacity to sue and to be sued and doing business, in Los Angeles County, State of California. Defendant exercised control over the wages, hours, and/or working conditions of Plaintiff and members of the proposed class throughout the liability period.

12. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is informed and believe, and thereon alleges, that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that the damages sustained by Plaintiff, aggrieved employees and the Class Members herein alleged were proximately caused by such Doe Defendants.

13. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff, aggrieved employees and other members of the Class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges 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 Defendants are legally attributable to the other Defendants.

## JURISDICTION AND VENUE

14. Venue is proper in this judicial district because Defendants conduct business in this County and Defendants have legal obligations to Plaintiff and many of the Class Members and aggrieved employees in this case that arose in this county.

1           15. The monetary damages, restitution, and statutory penalties sought by Plaintiff exceed  
2 the minimal jurisdictional limits of the Superior Court and will be established according to proof  
3 at trial. Based on information, investigation, and analysis, Plaintiff alleges that the amount in  
4 controversy, including claims for monetary damages, penalties, and attorney's fees, is more than  
5 twenty-five thousand dollars (\$25,000) and less than five million dollars (\$5,000,000).

6           16. The California Superior Court has jurisdiction in this matter because Plaintiff is a  
7 resident of California and Defendants are incorporated in and/or qualified to do business in  
8 California and regularly conduct business in California. Further, there is no federal question at  
9 issue as the claims herein are based solely on California law.

10                           **CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

11           17. During the Class Period and PAGA, Defendants committed various violations of the  
12 California Labor Code, the UCL and the applicable IWC Wage Order, as alleged below in more  
13 detail. Defendants enforce multiple policies that violate state law which are intended to increase its  
14 own profits to the detriment of its employees.

15           18. Plaintiff, aggrieved employees and the putative class are employees of Defendant  
16 working in or for their vehicle maintenance company.

17           19. Defendant failed to (1) pay for all hours worked, including overtime hours worked  
18 (§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198);  
19 (2) pay minimum wage (§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199); (3) pay  
20 wages twice per month (§204, 210); (4) provide rest breaks and cool-down rest periods (§226,  
21 226.7, 512, 558, 1198); (5) provide uninterrupted meal breaks (§226, 226.7, 512, 558, 1198); (6)  
22 reimburse for required business expenses (§1198, 2802); (7) provide accurate itemized wage  
23 statements and violating record keeping requirements (§226, 1174, 1174.5). These practices also  
24 constitute unlawful and unfair business practices. These policies and practices have deprived  
25 Plaintiffs, Class Members, and Aggrieved Employees of payment for all hours worked, and further  
26 damages, as set forth below, and render Defendants liable for damages, including penalties under  
27 PAGA.

1           20. Failure to pay for all hours worked, including overtime. Defendants rounded timecards  
2 in a manner that favored Defendants. Indeed, with Defendant's strict policies against arriving to  
3 work late, as well as returning from meal periods late, Plaintiff, Class Members and aggrieved  
4 employees would clock in before their start time and this consistently benefitted Defendants.  
5 Defendants also required Plaintiffs, Class Members and aggrieved employees to, from time to time,  
6 work off the clock. Plaintiff, Class Members and aggrieved employees were required to  
7 occasionally work off the clock during unpaid meal periods as well as periodically walk long  
8 distances to and from the break area.

9           21. Failure to pay minimum wage. Defendants sometimes failed to pay minimum wage  
10 due to their practices.

11           22. Failure to pay wages twice per month. Defendants sometimes failed to pay wages twice  
12 per month due to their practices.

13           23. Meal Breaks. Defendants, from time to time, failed to consistently maintain a policy  
14 and practice that provides its employees with uninterrupted meal breaks as required by California  
15 law.

16           24. Rest Breaks and cool-down rest periods. Defendants, from time to time, failed to  
17 maintain a policy and practice that provides its employees with off-duty rest periods and cool-  
18 down periods as required by California law.

19           25. Business expenses. Defendants also occasionally failed reimburse employees for  
20 business expenses. Defendant often made deductions from wages for the purchase of materials,  
21 listed inaccurately on wage statements as loans to the employee. Defendants also sometimes made  
22 deductions to wage statements for the cost of laundering employee uniforms, even if the employees  
23 did not use the Defendants' laundering service.

24           26. Wage Statements. Defendant further failed to provide timely, accurate, itemized wage  
25 statements to employees, as well as maintain accurate records, in accordance with Labor Code §§  
26 226 and 1174.

27           27. Unfair Business Practices. Based upon the above allegations, Defendants engaged in  
28 unfair competition.

1           28. Plaintiff brings this action on behalf of himself, and all other persons similarly situated,  
2 to recover from Defendants for failure to comply with California wage and hour laws, and for  
3 claims under Business and Professions Code § 17200.

4           29. This action has been brought and may properly be maintained as a class action  
5 pursuant to the provisions of Code of Civil Procedure §382 because the proposed class is  
6 ascertainable and there is a well-defined community of interest. Plaintiff is among in excess of 100  
7 employees who have been similarly injured by Defendants' unlawful employment policies and  
8 practices.

9           30. The "Relevant Time Period" or proposed "Class Period" as defined herein commences  
10 four years prior to the date of filing this Complaint.

11           31. The "PAGA Period" is defined herein commences one year prior to the date of filing  
12 the PAGA Notice letter with the LWDA.

13           32. The PAGA Class, also referred to herein as "aggrieved employees": "All current and  
14 former hourly, non-exempt employees of Defendants in California, at any time from one year  
15 prior to the filing of the PAGA Notice letter with the LWDA until the resolution of this matter."  
16 Plaintiffs reserve the right to amend or modify the definition of aggrieved employees with respect  
17 to the issues or in any other way.

18           33. Plaintiff brings this action on their behalf and as a class action under Cal. Code of  
19 Civil Procedure §382 on behalf of the following defined groups:

20           34. Proposed Class: "All persons who are employed or have been employed by  
21 Defendants in the State of California as hourly, non-exempt workers during the period of the  
22 relevant statute of limitations."

23           35. Proposed Sub-classes are defined as follows:

24           A. All persons who are employed or have been employed by Defendants in the  
25 State of California as hourly, non-exempt workers during the period of the  
26 relevant statute of limitations, who worked one or more shift in excess of five  
27 (5) hours.  
28

- 1 B. All persons who are employed or have been employed by Defendants in the  
2 State of California as hourly, non-exempt workers during the period of the  
3 relevant statute of limitations, who worked one or more shifts in excess of six  
4 (6) hours.
- 5 C. All persons who are employed or have been employed by Defendants in the  
6 State of California as hourly, non-exempt workers during the period of the  
7 relevant statute of limitations, who worked one or more shifts in excess of eight  
8 (8) hours.
- 9 D. All persons who are employed or have been employed by Defendants in the  
10 State of California as hourly, non-exempt workers during the period of the  
11 relevant statute of limitations, who worked one or more shifts in excess of three  
12 and one-half hours (3 ½), but less than or equal to six (6) hours.
- 13 E. All persons who are employed or have been employed by Defendants in the  
14 State of California as hourly, non-exempt workers during the period of the  
15 relevant statute of limitations, who worked one or more shifts in excess of six  
16 (6) hours, but less than or equal to ten (10) hours.
- 17 F. All persons who are employed or have been employed by Defendants in the  
18 State of California as hourly, non-exempt workers during the period of the  
19 relevant statute of limitations, who separated their employment from  
20 Defendants.
- 21 G. All persons who are employed or have been employed by Defendants in the  
22 State of California as hourly, non-exempt workers during the period of the  
23 relevant statute of limitations, who received pay for one or more pay periods.

24 36. This action is brought, and may properly be maintained, as a class action under CCP  
25 §382 and/or a representative action under Business & Professions Code §§17200 et seq. and Labor  
26 Code §2699 because there is a well-defined community of interest in the litigation, and the  
27 proposed Class, PAGA Class, and Subclasses (collectively “Class”) are easily ascertainable.  
28

1           37. Numerosity: The Proposed Class is so numerous that joinder of all members is  
2 impractical. Plaintiff is informed and believes, and on that basis alleges, that during the relevant  
3 time period, Defendants employed over 100 putative Class Members who are geographically  
4 dispersed and who satisfy the definition of the proposed Class. As such, a class action is the only  
5 available method for the fair and efficient adjudication of this controversy. Membership in the  
6 Proposed Class can be easily ascertained by an examination and analysis of employee and payroll  
7 records, among other records within Defendants' possession and control.

8           38. Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff,  
9 like others similarly situated, was subjected to Defendants' common, unlawful policies, practices,  
10 and procedures described above. The Plaintiff's positions at the company was typical of those of  
11 other Class Members. Plaintiff's claims are typical of the claims of each Class Member because  
12 each have sustained damages arising out of and caused by Defendants' common course of conduct,  
13 as alleged herein. As such, Plaintiff has the same interests in this matter as all members of the  
14 Class.

15           39. Adequacy: Plaintiff will fairly and adequately protect the interests of the members of  
16 the Class. Plaintiff has retained counsel competent and experienced in complex class actions and  
17 California labor and employment litigation.

18           40. Commonality: Common questions of law and fact exist, including but not limited to  
19 the following:

- 20           i. Whether Defendants violated wage and hour laws by failing to pay overtime  
21 wages;
- 22           ii. Whether Defendants violated wage and hour laws by failing to pay minimum  
23 wage;
- 24           iii. Whether Defendants violated wage and hour laws by failing to provide  
25 uninterrupted meal breaks;
- 26           iv. Whether Defendants' policy and practice concerning meal breaks was  
27 unlawful;
- 28

- v. Whether Defendants violated wage and hour laws by failing to provide rest breaks and cool-down periods;
- vi. Whether Defendants' policy and practice concerning rest breaks and cool-down periods was unlawful;
- vii. Whether Defendants violated wage and hour laws by failing to reimburse for required business expenses;
- viii. Whether Defendants unlawfully failed to keep and furnish Class Members with accurate, itemized records of hours worked, in violation of Labor Code §§ 226 and 1174;
- ix. The proper measure of damages sustained and the proper measure of restitution recoverable by Plaintiff, the Class Members, and Subclass Members;
- x. Whether the Class Members are entitled to injunctive relief to enjoin any further violations of wage and labor laws;
- xi. Whether Defendants, and each of them, are/were participants in the alleged unlawful and/or tortious conduct;
- xii. Whether Defendants' conduct was willful and reckless;
- xiii. The effect upon and the extent of injuries suffered by Plaintiff and the Plaintiff Class and the appropriate amount of reimbursement, restitution, damages, or other compensation; and
- xiv. What is the extent of liability of each Defendant, including DOE defendants, to each Class and Subclass member?

41. Superiority: A class action is superior to other available methods of the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where the damage suffered by individual plaintiffs, while not inconsequential, makes individual actions impracticable given the expenses and burdens associated with seeking individual relief. Prosecuting over 100 identical, individual lawsuits does not promote judicial efficiency or equity and consistency in judicial results. Moreover, the Class is a group of hourly, low-wage earning

employees who rely on their wages and requiring that each individual take time away from work to prosecute individual actions would be inequitable and result in undue hardship for the individual Class members and their families. Public policy favors efficient resolution of their claims and uniform enforcement of California Labor laws against entities skirting their legal obligations at the expense of a vulnerable working population.

42. Manageability: Plaintiff is informed and believes that all allegations in this Complaint are capable of being determined on the same evidence and based primarily on review of corporate records and key testimony of Defendants' corporate representatives. To the extent statistical analysis and representative evidence is necessary, Plaintiff and proposed class counsel will employ competent experts and consultants in the field to determine and review evidence for both issues of liability and damages in a scientifically reliable manner.

43. Plaintiff requests, pursuant to Rule 1857(a)(l) and Rule 3.766 of the California Rules of Court, that the absent Class and Subclass Members be notified by the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The names and address of the Class and Subclass Members are available from Defendant.

### **FIRST CAUSE OF ACTION**

#### **FAILURE TO PAY FOR ALL HOURS WORKED INCLUDING OVERTIME HOURS WORKED**

Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194,  
1197, 1197.1, 1198, Wage Order 9  
(Plaintiff Against All Defendants)

44. Plaintiff incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

45. Defendants' conduct described in this complaint violates the provisions of Labor Code §§ 200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, Wage Order 9.

1           46. Section 2(K) of Wage Order 9 defines “hours worked” as “the time during which an  
2 employee is subject to the control of an including all the time the employee is suffered or permitted  
3 to work, whether or not required to do so.” Defendants have been engaged in many unlawful  
4 employment practices which resulted in underpayment for hours worked, including sometimes  
5 suffering or permitting employees to work while off the clock and clocked out for lunch (via  
6 automatically deducted meal periods). Defendants, from time to time, also failed to pay sick pay,  
7 overtime, and penalty wages at the required regular rate of pay during pay periods when employees  
8 earned remuneration and nondiscretionary bonuses and payments in addition to their regular  
9 hourly rate.

10           47. Unpaid Wages – Rounding. Defendants round Plaintiff and class members’ timecards  
11 in a manner that favors Defendant. Indeed, with Defendants’ strict policies against arriving to work  
12 late, as well as returning from meal periods late, Plaintiff and Class Members often clock in before  
13 their start time and this benefitted Defendants.

14           48. The policy utilized by Defendants is neither fair nor neutral, as it shaved time from  
15 Plaintiff and Class Members’ hours worked, resulting in a failure to compensate Plaintiff and Class  
16 Members for all hours worked.

17           49. Off-the-Clock Hours Worked. Plaintiff and Class Members from time to time worked  
18 off the clock and were on occasion subjected to periods wherein they were under the Defendants’  
19 control but not compensated for their time. Plaintiff and Class Members were required to work off  
20 the clock during unpaid meal periods as well as walk long distances to and from the break area.

21           50. Defendants’ conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197  
22 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5,  
23 226, 558, 1194 and 1194.2, Plaintiff and other Class Members are entitled to recover damages for  
24 the nonpayment of wages of all their worked hours in addition to penalties, attorneys’ fees,  
25 expenses, and costs of suit.

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1 herein. As a result of these practices, Plaintiff and Class Members were underpaid for hours  
2 worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay  
3 all wages owed twice per month.

4 58. Defendants also required employees, as a condition of receiving the check for their  
5 earned wages, to sign a form stating that they were not injured within the 15 days prior to receipt  
6 of the check. This has led to a delay in receipt of checks for individuals who are not present at the  
7 workplace to sign this form. Due to this failure, Defendants are liable under Labor Code §204 and  
8 §210 for failure to pay wages as required by law, and §432.5 for making employees sign documents  
9 that violate California law.

#### 10 **FOURTH CAUSE OF ACTION**

##### 11 **FAILURE TO PROVIDE REST BREAKS AND COOL-DOWN REST PERIODS**

12 Cal. Lab. Code §§226, 226.7, 512, 558, 1198

13 (Plaintiff Against All Defendants)

14 59. Plaintiff incorporates by reference in this cause of action each allegation of the  
15 preceding paragraphs as though fully set forth herein.

16 60. Defendants' conduct described in this complaint violates the provisions of Labor Code  
17 §§ 226, 226.7, 512, 558, 1198.

18 61. Defendants have failed to maintain a compliant rest period policy and practice that  
19 provides their employees with off-duty rest periods as required by California law. Plaintiff reports  
20 that there were many occasions wherein he and Class Members did not receive required rest breaks.  
21 Plaintiff and Class Members received one 10-minute break per day. Instead of taking another 10-  
22 minute paid rest period, Defendants required employees to take a 40-minute unpaid lunch period.  
23 They also from time to time were not permitted to take required cool-down breaks as discussed  
24 below.

25 62. Rest periods were from time to time either less than ten minutes, not provided,  
26 interrupted or late, "on duty", or not scheduled before and after a meal period for shifts greater  
27 than six hours, as prescribed by California law because Defendants: (1) did not account for all  
28 hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train

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

7  
8 63. Labor Code section 226.7, subdivision (c) provides that:

9 If an employer fails to provide an employee a... recovery period in  
10 accordance with a state ., law, including, but not limited to an applicable statute or  
11 applicable regulation, standard, or order of the Occupational Safety and Health  
12 Standards Board, or the Division of Occupational Safety and Health, the employer  
13 shall pay the employee one additional hour of pay at the employee's regular rate of  
14 compensation for each workday that the meal or rest or recovery period is not  
15 provided.

16 64. Defendants required Plaintiff and Class Members to periodically work in temperatures  
17 far exceeding eighty (80) degrees Fahrenheit and did not provide adequate cool-down  
18 opportunities. Areas in the facility would sometimes get unsafely hot and employees were required  
19 to wait until their scheduled break or meal period in order to get relief from the heat. Class  
20 Members were exposed to a high risk of suffering heat illness so that their life, safety, and health  
21 were jeopardized by Defendants' conduct, violating California Code of Regulation, Title, section  
22 3395 and thus Labor Code sections 226.7 and 1198.

23 65. Defendants did not always authorize or permit all of its hourly employees to take at  
24 least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work,  
25 or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When  
26 breaks were missed Defendants from time to time failed to pay the 1-hour penalty, as required.  
27 Because Defendants violated the Wage Order, Defendants are liable under Labor Code §1198.  
28

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE UNINTERRUPTED MEAL BREAKS**

3 Cal. Lab. Code §§226, 226.7, 512, 558, 1198

4 (Plaintiff Against All Defendants)

5 66. Plaintiff incorporates by reference in this cause of action each allegation of the  
6 preceding paragraphs as though fully set forth herein.

7 67. Defendants' conduct described in this complaint violates the provisions of Labor Code  
8 §§ 226, 226.7, 558 1198.

9 68. During Plaintiff's employment, Defendants failed to maintain a compliant meal period  
10 policy and practice. Defendants from time to time failed to provide all of its hourly employees  
11 with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n  
12 employer may not employ an employee for a work period of more than five hours per day without  
13 providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a)  
14 provides, "[n]o employer shall require an employee to work during any meal... period mandated  
15 by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage  
16 Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute  
17 meal period, the meal period shall be considered an 'on duty' meal period and counted as time  
18 worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor  
19 Code.

20 69. Defendants used a bell system to notify employees when meal periods were to start and  
21 stop, and automatically deducted 40 minutes from employee wages regardless of whether and  
22 when and employee was able to take a break. Plaintiff and Class Members were from time to time  
23 required to continue working during meal periods, especially when working in roles utilizing paint.

24 70. Meal periods were also noncompliant because Defendants auto-deducted/altered  
25 timeclock entries for meal periods so that they do not show a meal period violation. Employers  
26 must record meal period time entries to the exact minute, prohibiting rounding or shaving time for  
27 employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)  
28

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

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE FOR REQUIRED BUSINESS EXPENSES**

13 Cal. Labor Code §§ 1198, 2802

14 (Plaintiff Against All Defendants)

15 72. Plaintiff incorporates by reference in this cause of action each allegation of the  
16 preceding paragraphs as though fully set forth herein.

17 73. Defendants' conduct described in this complaint violates the provisions of Labor Code  
18 §§ 1198, 2802.

19 74. Labor Code §2802 requires employers to indemnify employees for necessary  
20 expenditures or losses incurred by employees in direct consequence of the discharge of duties.  
21 Plaintiff and Class Members are required to use their personal funds to pay for tools and toolboxes,  
22 as well as water and laundering uniforms. Defendants from time to time made deductions from  
23 wages for the purchase of materials, listed inaccurately on wage statements as loans to the  
24 employee. Defendants also made periodic deductions to wage statements for the cost of laundering  
25 employee uniforms, even if the employees did not use the Defendants' laundering service.  
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## PAYSTUB AND RECORD KEEPING VIOLATIONS

(Plaintiff Against All Defendants)

77. Defendants knowingly and intentionally, from time to time, failed to provide timely, accurate, itemized wage statements to Plaintiff and the Class Members in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and Class Members, and the records maintained by Defendants, have not always accurately reflected actual gross wages earned, including pay for all hours worked, and overtime pay, and pay for meal and rest period penalty wages. Wage statements further often fail to state total hours worked and inaccurately listed unlawful deductions as “loans.”

A. An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the

1 name and address of the legal entity that is the employer and, if the employer is  
2 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name  
3 and address of the legal entity that secured the services of the employer, and (9)  
4 all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee...

6 79. Such failures caused injury to Plaintiff and others, by, among other things, impeding  
7 them from knowing the total hours worked and the amount of wages to which they are and were  
8 entitled. Defendants from time to time knowingly and intentionally failed to accurately itemize the  
9 gross wages earned, net wages earned, and total hours worked.

10 80. Finally, Defendants have violated Labor Code §432.5 for forcing Plaintiff and Class  
11 Members to sign employment related contracts and documents that contained unlawful terms of  
12 employment.

13 **EIGHTH CAUSE OF ACTION**

14 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF**

15 California Business and Professions Code section 17200, et seq.

16 **(Plaintiff Against All Defendants)**

17 81. Plaintiff incorporates by reference in this cause of action each allegation of the  
18 preceding paragraphs as though fully set forth herein.

19 82. Defendants knowingly committed, and upon information and belief continue to  
20 commit, ongoing unlawful business practices within the meaning of the UCL, including, but not  
21 limited to unlawful practices as described in the causes of action articulated above, and hereby  
22 incorporated herein.

23 83. Plaintiff lost money and property as a result of Defendants' unlawful business practices  
24 described above.

25 84. Pursuant to the UCL, Plaintiff and all Class Members are entitled to restitution of  
26 money or property acquired by Defendants by means of such unlawful business practices, in  
27 amounts not yet known, but to be ascertained at trial.  
28

1           85. Pursuant to the UCL, Plaintiff and Class Members are entitled to injunctive relief  
2 against Defendants' ongoing unlawful business practices. If an injunction does not issue enjoining  
3 Defendant from engaging in the unlawful business practices described above, Plaintiff and the  
4 general public will be irreparably injured.

5           86. Plaintiff has no plain, speedy, and adequate remedy at law. Defendants, if not enjoined  
6 by this Court, will continue to engage in the unlawful business practices described above in  
7 violation of the UCL, in derogation of the rights of Plaintiff and Class Members and of the general  
8 public.

9           87. Plaintiff's success in this action will result in the enforcement of important rights  
10 affecting the public interest by conferring a significant benefit upon the general public.

11           88. Defendants' numerous violations of local and California law, as well as the other  
12 statutory and regulatory violations alleged herein, constitute unlawful business actions and  
13 practices in violation of Business and Professions Code § 17200, et seq.

14           89. Defendants have violated Labor Code §432.5 by forcing Plaintiff and Class Members  
15 to sign employment-related contracts and documents that contained unlawful terms of  
16 employment.

17           90. Pursuant to Business and Professions Code § 17200, et seq., Plaintiff and the Class  
18 Members are entitled to restitution of unpaid wages and penalty pay, among other relief alleged  
19 herein, that were withheld and retained by Defendants during a period that commences four years  
20 prior to the filing of this action. Plaintiff is further entitled to a permanent injunction requiring  
21 Defendants to comply with all provisions of California labor law, including properly paying the  
22 lawful rate of pay for all hours worked, providing rest periods to all workers as defined herein,  
23 timely paying due wages upon termination, maintaining accurate wages statements and payroll  
24 records, in addition to an award of attorneys' fees and costs pursuant to Code of Civil Procedure  
25 § 1021.5 and other applicable law, and costs.

STATUTORY PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT,  
LABOR CODE §2698 *et seq.* AGAINST ALL DEFENDANTS

92. Under the Private Attorneys General Act of 2006, Labor Code §§2698-2699.5, an aggrieved employee, on behalf of themselves and other current or former employees, may recover penalties under any provision of the Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the Labor Code. Plaintiffs are aggrieved employees under PAGA.

94. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiffs' success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary, as no public agency has pursued enforcement. Plaintiffs have incurring a financial burden in pursuing this action and it would be

1 against the interests of justice to require payment of attorneys' fees and costs from any recover  
2 that might be obtained herein, pursuant to, inter alia, Labor Code §§2698, *et seq.*, and Code of  
3 Civil Procedure §1021.5

4 95. In addition, if Plaintiffs succeed in enforcing these rights affecting the public interest,  
5 then attorneys' fees may be awarded to Plaintiffs and against Defendants under Code of Civil  
6 Procedure §1021.5 and other applicable law in part, because:

7 96. A successful outcome in this action will result in the enforcement of important rights  
8 affecting the public interest by requiring Defendants to comply with the wage and hour laws and  
9 California's unfair business practice law;

10 97. This action will result in a significant benefit to Plaintiffs, the Class, and the general  
11 public by bringing to a halt unlawful and/or unfair activity;

12 98. Unless this action is prosecuted, members of the Class and general public will not  
13 recover those moneys, and many of Defendants' employees would not be aware that the acts and  
14 practices they were subjected to by Defendants were wrongful;

15 99. Unless this action is prosecuted, Defendants will continue to mislead their employees  
16 about the true nature of their rights and remedies under the wage and hour laws; and

17 100. An award of attorneys' fees and costs is necessary for the prosecution of this action  
18 and will result in a benefit to Plaintiffs, the Class, aggrieved employees, and to consumers in  
19 general, by preventing Defendants from continuing to circumvent the wage and hour statutes and  
20 frustrate the long-standing recognition by the California legislature and the courts that such  
21 statutes, as pled herein, are not merely a matter of private concern between employer and employee  
22 to be eviscerated by considerations of waiver, contributory negligence, good or bad faith, and  
23 private agreements. Rather, the wage and hour statutes have been described as a matter of public  
24 concern, were designed to provide minimum substantive guarantees to individual workers and are  
25 essential to public welfare.  
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WHEREFORE, Plaintiff, on behalf of himself, the Proposed Class, and aggrieved employees, request judgment and the following specific relief against Defendants as follows:

- A. That the Court determine that this action may be maintained as a class action under Code of Civil Procedure § 382;
- B. That the Court determine that this action may be maintained as a PAGA representative action under Cal. Labor Code. §2698 *et seq.* and that the Court enter an award of PAGA penalties against Defendants;
- C. Provision of class notice to all members of the Class;
- D. That Defendants are found to have violated the above-referenced provisions of the Labor Code, CCR and the IWC Wage Order as to Plaintiff, Class Members and aggrieved employees;
- E. For compensatory damages, in an amount according to proof at trial, with interest thereon;
- F. For compensation for not being paid overtime;
- G. For compensation for not being paid minimum wage;
- H. For compensation for not paid wages twice per month;
- I. For compensation for not being provided proper meal breaks;
- J. For compensation for not being provided proper rest breaks and cool-down periods;
- K. For compensation for not being provided business expense reimbursement;
- L. For compensation for not being paid penalty wages;
- M. That Defendant's actions are found to be willful and/or in bad faith to the extent necessary under §§ 201, 202, 203, and 558 of the California Labor Code for willful failure to pay all compensation owed at the time of separation to Plaintiff, Class Members and aggrieved employees no longer employed by Defendant;

- 1 N. That Plaintiff, Class Members and aggrieved employees receive penalties for  
2 Defendant's violation of §226 and 1174 of the California Labor Code for willful  
3 failure to provide and maintain the required accurate and itemized wage  
4 statements;
- 5 O. That Plaintiff, Class Members and aggrieved employees receive an award in the  
6 amount of unpaid wages owed, including interest thereon, and penalties as  
7 provided in the Labor Code, CCR and Wage Order, including under Labor Code  
8 §§ 203, 510, and 558, subject to proof at trial;
- 9 P. That Plaintiff, Class Members and aggrieved employees receive damages  
10 pursuant to §§248.5 in addition to reasonable attorneys' fees, and costs of suit  
11 pursuant to Labor Code § 218.5 and CCP 1021.5;
- 12 Q. That Defendants be ordered to pay restitution to Plaintiff, Class Members and  
13 aggrieved employees for amounts acquired through Defendants' unlawful  
14 activities pursuant to Business and Professions Code §§ 17200-05 and enjoined  
15 to cease and desist from unlawful and unfair activities in violation of California  
16 Business and Professions Code § 17200 et. seq.;
- 17 R. That Plaintiff, Class Members receive an award of reasonable attorneys' fees  
18 and costs pursuant to Code of Civil Procedure §1021.5, Labor Code §226,  
19 218.5, and 1194 and/or applicable laws;
- 20 S. That the Court issue declaratory relief that Defendants' challenged policies are  
21 unlawful; and
- 22 T. That the Court order further relief, in law and equity, as it deems appropriate  
23 and just.
- 24

25 DATED: May 6, 2024

KOUL LAW FIRM, APC

26   
27 BY: Nazo Koulloukian, Esq.  
28 Attorneys for Plaintiff JOSE MANUEL  
MARTINEZ and putative class members

# EXHIBIT 1



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SUITE 1710

LOS ANGELES, CA 90010

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February 23, 2024

**Via E-filing:**

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

**Via Certified U.S. Mail:**

PHENIX TRUCK BODY MANAGEMENT  
c/o PETER RISERBATO  
1785 MT. VERNON AVENUE  
POMONA, CA 91868

SAFE VEHICLE SYSTEMS, INC.  
c/o RICK ALBERTINI  
1785 MT VERNON AVE  
POMONA, CA 91768

PHENIX ENTERPRISES, INC.  
c/o PETER RISERBATO  
1785 MT. VERNON AVENUE  
POMONA, CA 91868

Re: PAGA Notice Pursuant to California Labor Code §2699  
Claimant: Jose Manuel Martinez  
Employers: Phenix Truck Body Management; Safe Vehicle Systems, Inc.

Dear Sir or Madam:

Claimant and aggrieved employee Jose Manuel Martinez has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, and Paul Haines, Esq., of Haines Law Group, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Phenix Truck Body Management and Safe Vehicle Systems, Inc., (hereafter referred to as “Employer”). Employer hired, assigned, and paid Claimant and aggrieved employees to work at their facilities in California. Claimant is an aggrieved employee whose job involves vehicle repairs and painting.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under 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 Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by him, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that he alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those he did not personally suffer.

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

(Cal. Labor Code §§200, 204, 206, 206.5, 210, 216, 218, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 9)

Section 2(K) of Wage Order 9 defines "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including suffering or permitting employees to work while off the clock and clocked out for lunch (via automatically deducted meal periods), Employer also failed to pay sick pay, overtime, and penalty wages at the required regular rate of pay during pay periods when employees earned remuneration and nondiscretionary bonuses and payments in addition to their regular hourly rate.

#### **Unpaid Wages – Rounding**

Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer. Indeed, with Employer's strict policies against arriving to work late, as well as returning from meal periods late, Claimant and aggrieved employees clock in before their start time and this consistently benefitted Employer. Claimants wage statements consistently show hours rounded down.

The California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its

face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

#### Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to work off the clock during unpaid meal periods as well as walk long distances to and from the break area.

Employer’s conduct described herein violates Labor Code §§ 200, 223, 226, 500, 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to Labor Code §§ 203, 218.5, 226, 558, 1194 and 1194.2, Claimant and other Aggrieved Employees are entitled to recover damages for the nonpayment of wages of all their worked hours in addition to penalties, attorneys’ fees, expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq.

#### Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Employer also required employees, as a condition of receiving the check for their earned wages, to sign a form stating that they were not injured within the 15 days prior to receipt of the check. This has led to a delay in receipt of checks for individuals who are not present at the workplace to sign this form. Due to this failure, Employer is liable under Labor Code §204 and §210 for failure to pay wages as required by law, and §432.5 for making employees sign documents that violate California law.

#### **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, in addition to failure to pay meal and rest period penalty wages. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

### **Failure to Provide Rest Breaks and Cool-Down Rest Periods**

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

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that there were many occasions wherein he and aggrieved employees did not receive required rest breaks. Employees received one 10-minute break per day. Instead of taking another 10-minute paid rest period, Employer required employees to take a 40-minute unpaid lunch period. They also were not permitted to take required cool-down breaks as discussed below.

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

Labor Code section 226.7, subdivision (c) provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state ., law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Employer required Claimant and aggrieved employees to consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit and did not provide adequate cool-down opportunities. Areas in the facility would get unsafely hot and employees were required to wait until their scheduled break or meal period in order to get relief from the heat. Aggrieved employees

were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer's conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

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

### **Failure to Provide Uninterrupted Meal Breaks**

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

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Employer used a bell system to notify employees when meal periods were to start and stop, and automatically deducted 40 minutes from employee wages regardless of whether and when and employee was able to take a break. Claimant and aggrieved employees were often required to continue working during meal periods, especially when working in roles utilizing paint.

Meal periods were also noncompliant because Employer auto-deducted/altered timeclock entries for meal periods so that they do not show a meal period violation. Our Supreme Court has recently re-emphasized the importance of fully compliant meal periods, holding that employers must record meal period time entries to the exact minute, prohibiting rounding or shaving time for employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because

Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

**Failure to Provide Safe Working Conditions**  
**(Cal. Labor Code §1198, Wage Order)**

Employer's workplaces would get unsafely hot. Claimant and aggrieved employees were forced to work in incredibly hot and under-ventilated rooms reaching temperatures of over 80 degrees without air conditioning.

Wage Order ¶15 requires:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

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

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Claimant and aggrieved employees are required to use their personal funds to pay for tools and toolboxes, as well as water and laundering uniforms. Employer made deductions from wages for the purchase of materials, listed inaccurately on wage statements as loans to the employee. Employer also made deductions to wage statements for the cost of laundering employee uniforms, even if the employees did not use the Employer's laundering service. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

**Failure to Provide Potable Drinking Water**  
**(Cal. Labor Code §2441)**

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups. Claimant and aggrieved employees were not provided with potable water within reasonable proximity to their workplace. The only free water provided was a drinking fountain and Employer did not provide cups. As explained above, Employees were asked to contribute to a joint fund to purchase bottled water to be stored in a cooler.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

**Failure to Pay Wages Due Upon Termination**  
**(Cal. Lab. Code §§201, 202, 203, 256 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 aggrieved employees 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, separated aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

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

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross

wages earned, including pay for all hours worked, and overtime pay, and pay for meal and rest period penalty wages. Wage statements further fail to state total hours worked and inaccurately listed unlawful deductions as “loans.”

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

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 knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

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

### **Conclusion**

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

Respectfully submitted,

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

Nazo Koulloukian, Esq.  
Attorneys for Claimant

cc: Paul Haines, Esq., Haines Law Group, APC

**PROOF OF SERVICE**

**Case No. 24STCV05558**

***Martinez v. Phenix Truck Body Management., et al.***

I, IVETTE HERNANDEZ declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the entitled case. The name and address of my residence or business is KOUL LAW FIRM, 3435 Wilshire Blvd. Ste. 1710, Los Angeles, California 90010.

On May 6, 2024, I served the foregoing document described as:

**FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

  X   **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address from e-mail ivette@koullaw.com pursuant to California Rules of Court. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

  X   **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

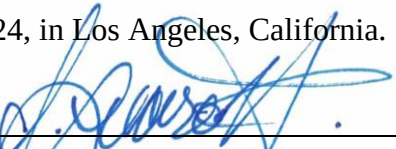
on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [ ] as stated on the attached service list:

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Attorneys for Defendants PHENIX TRUCK BODY MANAGEMENT, and SAFE VEHICLE SYSTEMS, INC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this May 6, 2024, in Los Angeles, California.

  
\_\_\_\_\_  
IVETTE HERNANDEZ