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September 26, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Cayce Chernenko v. Trans-West Security Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Cayce Chernenko in connection with his claims under the California Labor Code. Mr. Chernenko was an employee of TRANS-WEST SECURITY SERVICES, INC. and/or TRANS-WEST SERVICES, INC. For the purpose of this letter, Mr. Chernenko collectively refers to these entities as “TRANS-WEST.”

The employers may be contacted directly at the addresses below:

TRANS-WEST SECURITY SERVICES, INC.
8503 CRIPPEN STREET
BAKERSFIELD, CA 93311

TRANS-WEST SERVICES, INC.
8503 CRIPPEN STREET
BAKERSFIELD, CA 93311

Mr. Chernenko intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Chernenko seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TRANS-WEST as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TRANS-WEST employed Mr. Chernenko as an hourly paid, non-exempt employee from approximately September 2022 to October 2023. Mr. Chernenko worked for TRANS-WEST as a Security Guard, assigned to work at various jobsites throughout Kern County, California. During his employment, Mr. Chernenko typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Chernenko was compensated approximately \$17.50 per hour. His job duties included, without limitation, monitoring and securing jobsites.

TRANS-WEST committed each of the following Labor Code violations against Mr. Chernenko, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

TRANS-WEST’s Company-Wide and Uniform Payroll and HR Practices

TRANS-WEST SECURITY SERVICES, INC. and TRANS-WEST SERVICES, INC. are California corporations. Together, they are the largest physical private security company in Kern County and provide corporate and private security across California. Upon information and belief, TRANS-WEST maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, California, for all non-exempt, hourly paid employees working for TRANS-WEST in California, including Mr. Chernenko and other aggrieved employees. At all relevant times, TRANS-WEST issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Chernenko and other aggrieved employees, regardless of their location or position.

Upon information and belief, TRANS-WEST maintains a centralized Payroll department at its corporate headquarters in Bakersfield, California, which processes payroll for all non-exempt, hourly paid employees working for TRANS-WEST in California, including Mr. Chernenko and other aggrieved employees. Further, TRANS-WEST issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Chernenko and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TRANS-WEST utilized the same methods and formulas when calculating wages due to Mr. Chernenko and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TRANS-WEST willfully failed to pay all overtime wages owed to Mr. Chernenko and other aggrieved employees. During the relevant time period, Mr. Chernenko and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8)

¹ These facts, theories, and claims are based on Mr. Chernenko’s experience and counsel’s review of those records currently available relating to Mr. Chernenko’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Chernenko reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TRANS-WEST had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Chernenko and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. This policy of limiting overtime led Mr. Chernenko and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, TRANS-WEST's management required Mr. Chernenko to complete paperwork, such as incident reports, but was not permitted to remain clocked in and record this time spent working after his scheduled shift end-time. As another example, because of TRANS-WEST's company-wide policy and/or practice of providing its customers with continuous monitoring of jobsites, Mr. Chernenko was sometimes required to spend time waiting for another employee to arrive to the jobsite so he could leave for the day. However, due to TRANS-WEST's restriction on overtime, Mr. Chernenko was not allowed to remain clocked in and record this time spent working after his shift end-time.

Additionally, during the relevant time period, TRANS-WEST required Mr. Chernenko and other aggrieved employees to travel to distant jobsites and assignments, but did not compensate them for their time spent traveling to and from these locations. Although Mr. Chernenko and other aggrieved employees sometimes met at TRANS-WEST's main office to travel to jobsites, TRANS-WEST would also require Mr. Chernenko and other aggrieved employees to drive their personal vehicles to distant jobsites. For example, TRANS-WEST sometimes required Mr. Chernenko to drive for approximately 40 miles or more from his home in Bakersfield, California, to various jobsites, including but not limited to those in McKittrick, California. However, Mr. Chernenko and other aggrieved employees were not allowed to clock in until arriving at the assigned jobsite for the start of their scheduled shifts, and thus were not paid for any time spent traveling to or from the distant jobsite. Moreover, on instances when Mr. Chernenko first reported to TRANS-WEST's main office in order to obtain a company-owned vehicle before driving himself to jobsites, TRANS-WEST also required Mr. Chernenko to complete pre-trip vehicle inspection paperwork, which could take about 10 minutes. Mr. Chernenko was similarly not allowed to record any of this time spent completing pre-trip vehicle inspection paperwork. Thus, Mr. Chernenko and other aggrieved employees were not compensated for all travel time, despite being under the direction and control of TRANS-WEST.

Second, TRANS-WEST had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including providing continuous jobsite monitoring and completing observations, or "rounds," of security checkpoints at 5- or 20-minute intervals. TRANS-WEST's policies and/or practices resulted in a failure to provide Mr. Chernenko and other aggrieved employees with adequate meal period coverage, and thus, Mr. Chernenko and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Also, TRANS-WEST has systematically, and on a company-wide basis, understaffed some of its jobsite locations by adopting a single-staffing model, whereby only one employee was scheduled to work at certain times, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. TRANS-WEST also had a practice of failing to schedule meal periods at all, which further caused Mr. Chernenko and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Chernenko and other aggrieved employees worked through their meal periods and/or had their meal periods interrupted in order to complete their assigned workloads. TRANS-WEST did not compensate Mr. Chernenko and other aggrieved employees for the time they continued to perform tasks during unpaid meal periods.

Third, on information and belief, TRANS-WEST maintained a company-wide on-premises meal period policy, which mandated that Mr. Chernenko and other aggrieved employees remain on its clients' jobsite premises during their unpaid meal periods. Because Mr. Chernenko and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, Mr. Chernenko and other aggrieved employees were unable to run personal errands because they were unable to leave the work premises. Thus, TRANS-WEST effectively maintained control over Mr. Chernenko and other aggrieved employees during their unpaid meal periods. Moreover, TRANS-WEST had a practice of requiring that Mr. Chernenko and other aggrieved employees carry a company-issued radio and to respond to requests from dispatch at all times, including during unpaid meal periods.

TRANS-WEST knew or should have known that as a result of these company-wide practices and/or policies, Mr. Chernenko and other aggrieved employees were performing assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Chernenko and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Chernenko and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

TRANS-WEST's failure to pay Mr. Chernenko and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4-2001 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." Cal. Code Regs. Tit. 8, § 11040(2)(K) (defining "Hours Worked").

First, as set forth above, as a result of TRANS-WEST's policy of limiting the amount of overtime employees could accrue, TRANS-WEST required Mr. Chernenko and other aggrieved employees to perform work off-the-clock after scheduled shifts, including, but not limited to, completing incident reports and waiting for other employees to arrive to jobsites, without being compensated for the time they worked. Additionally, as stated, TRANS-WEST required Mr. Chernenko and other aggrieved employees to travel to distant jobsites and assignments, but they were not allowed to clock in until arriving at the assigned jobsite for the start of their scheduled shifts, and thus were not paid for any time spent traveling to or from the distant jobsites.

Second, as set forth, due to TRANS-WEST's policies and/or practices of understaffing and/or single-staffing its jobsites while assigning heavy workloads, requiring employees to remain on work premises during meal periods, requiring employees to carry a company-issued radio to respond to calls from dispatch at all times, and failing to schedule meal periods, Mr. Chernenko and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Thus, TRANS-WEST did not pay at least minimum wages for all hours worked by Mr. Chernenko and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TRANS-WEST did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, TRANS-WEST regularly failed to pay at least minimum wages to Mr. Chernenko and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under California law, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952, 963 (9th Cir. Cal. 2013). In addition, an employee must be provided with the opportunity to eat his or her meal while performing the duties required and any on-duty meal period must, like any off-duty meal period, be at least 30 minutes long. *L'Chaim House, Inc., et al. v. Division of Labor Standards Enforcement*, 38 Cal. App. 5th 141 (2019).

During the relevant time period, as stated, TRANS-WEST had, and continues to have, a company-wide policy and/or practice of understaffing and/or single-staffing jobsites while assigning heavy workloads, including providing continuous jobsite monitoring and completing observations, or “rounds,” of security checkpoints at 5- or 20-minute intervals, which has resulted in a lack of meal period coverage and prevented Mr. Chernenko and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, TRANS-WEST had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Chernenko and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, as stated, TRANS-WEST had a company-wide policy and/or practice of requiring that Mr. Chernenko and other aggrieved employees carry a company-issued radio to respond to requests from dispatch at all times, including during meal periods. For example, TRANS-WEST’s dispatcher employees would call Mr. Chernenko and other aggrieved employees every three (3) hours to make sure they were completing their assigned tasks and expected them to answer the calls even when they were taking their meal periods.

TRANS-WEST’s practices and policies prevented Mr. Chernenko and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Chernenko and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Chernenko would often miss meal periods and had his meal periods interrupted.

As also stated, on information and belief, during the relevant time period, TRANS-WEST maintained and implemented a company-wide on-premises meal period policy for employees, which mandated that Mr. Chernenko and other aggrieved employees remain on the work premises during the meal periods. As stated in TRANS-WEST’s “Meal and Rest Period Rules And On Duty Meal Agreement,” (*see infra*) “[TRANS-WEST] pays its employees for on-duty meal periods and requires employees to remain on site during these breaks.” Because Mr. Chernenko and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, TRANS-WEST effectively maintained control over Mr. Chernenko and other aggrieved employees during meal periods.

In addition, TRANS-WEST took the position that the nature of work performed by Mr. Chernenko and other aggrieved employees called for “on-duty” meal periods and on that basis, did not provide off-duty meal periods and did not pay Mr. Chernenko and other aggrieved employees all meal period premiums for non-compliant meal periods. However, TRANS-WEST’s use of an “on-duty” meal period policy is and was unlawful. Under California law, an on-duty meal period agreement does not absolve employers of the duty to provide timely, 30-minute meal periods.² TRANS-WEST’s on-duty meal policy failed to inform Mr. Chernenko and other aggrieved employees that they are

² Employers must provide employees a timely 30-minute meal period even though that meal period may be on-duty instead of off-duty. See *L’Chaim*, 38 Cal. App. 5th at 149 (“If an employee is entitled to an off-duty meal period of 30 minutes, yet work obligations intrude on a portion of that time, the off-duty period is converted to an on-duty period—no matter how small the portion of the period that work intruded upon—and the employee is paid for the entire period. There is no suggestion that once work interrupts an employee’s meal period, the period simply ends even if 30 minutes have not yet passed.”) and 147 (“[A]n on-duty meal period is not the functional equivalent of no meal period at all. On-duty meal periods are an intermediate category requiring more of employees than off-duty meal periods but less of employees than their normal work.”).

entitled to a 30-minute on-duty meal period and that on-duty meal periods must be timely, and therefore is facially invalid. Moreover, under California law, “on-duty” meal periods are a limited alternative to the requirement to provide off-duty meal periods and can only be utilized under certain circumstances. IWC Wage Order 4-2001, subdivision 11(A) provides that an “on duty” meal period “shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.”

TRANS-WEST’s “on-duty” meal period policy results from the company’s own staffing and business decisions, not because the nature of the work required on-duty meal periods. There were multiple employees employed by TRANS-WEST at Mr. Chernenko’s and other aggrieved employees’ jobsite locations and TRANS-WEST’s clients’ jobsites are not in remote or isolated areas. TRANS-WEST could have provided rover meal period coverage for Mr. Chernenko and other aggrieved employees or staffed more employees at its jobsites, but chose not to do so. Further, the work of TRANS-WEST’s employees is not of the kind that could be said to meet the “nature of the work” exception. Mr. Chernenko and other aggrieved employees were responsible for patrolling premises, responding to incidents, and operating security booths. None of these tasks is akin to the kind that the California Division of Labor Standards Enforcement (“DLSE”) has found warrant an “on-duty” meal period, such as transporting hazardous materials via vehicles that must be monitored at all times pursuant to federal regulation. Therefore, TRANS-WEST’s use of an “on-duty” meal period agreement is improper and unlawful. Because of TRANS-WEST’s company-wide “on-duty” meal period policy, Mr. Chernenko and other aggrieved employees did not receive all required off-duty meal periods and did not receive premium pay for missed, late, or interrupted meal periods.

Further, TRANS-WEST did not provide Mr. Chernenko and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, on days where Mr. Chernenko worked in excess of 10 hours in one day, he was not provided with a second meal period. Mr. Chernenko and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, TRANS-WEST had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers. TRANS-WEST took the position that non-exempt, hourly paid employees had waived their rights to second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, TRANS-WEST’s “Waiver of Second Meal Period” form requires employees to provide written notice should they wish to revoke the waiver. TRANS-WEST’s presumption that meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Chernenko and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer’s obligation to provide a meal period is only “triggered” when the employer “employs an employee for a work period of more than five hours per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.”).

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That TRANS-WEST required Mr. Chernenko and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because TRANS-WEST's obligation to provide Mr. Chernenko and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

TRANS-WEST knew or should have known that as a result of its company-wide policies and/or practices, Mr. Chernenko and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. TRANS-WEST further knew or should have known that it did not pay Mr. Chernenko and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, TRANS-WEST engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Chernenko and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, TRANS-WEST failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest."

Augustus, et al. v. ABM Security Services, Inc., 2 Cal. 5th 257, 273 (2016).

During the relevant time period, TRANS-WEST regularly failed to authorize and permit Mr. Chernenko and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. TRANS-WEST maintained and implemented, on a company-wide basis, a non-compliant written rest period policy that prevented Mr. Chernenko and other aggrieved employees from taking compliant rest periods. Specifically, TRANS-WEST's "Rest Break Notice" policy states, in relevant part: "Rest breaks are paid as time worked and **may be controlled by the employer.**" (emphasis added). However, under California law, an employer must relinquish any control over how the employees spend their rest period time. Thus, TRANS-WEST's written rest period policy is non-compliant on its face, as it fails to relinquish control over how employees spend their rest periods.

Additionally, as with meal periods, TRANS-WEST's company-wide practices, including understaffing and assigning heavy workloads, and its requirement that employees carry a company-issued radio at all times, including during rest periods prevented Mr. Chernenko and other aggrieved employees from being relieved of all duties to take rest periods. Additionally, TRANS-WEST failed to schedule rest periods, which, coupled with TRANS-WEST's failure to provide adequate rest period coverage, further led to Mr. Chernenko and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, TRANS-WEST maintained a company-wide on-premises rest period policy, which effectively required that Mr. Chernenko and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Chernenko and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, TRANS-WEST effectively maintained control over Mr. Chernenko and/or other aggrieved employees during rest periods.

As a result of TRANS-WEST's practices and policies, Mr. Chernenko and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Chernenko had to forgo all of his rest periods, because of the lack of rest period coverage and TRANS-WEST's failure to schedule rest periods for employees.

TRANS-WEST also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Chernenko and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, TRANS-WEST failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TRANS-WEST has not provided Mr. Chernenko and other

aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TRANS-WEST has knowingly and intentionally provided Mr. Chernenko and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TRANS-WEST issued uniform wage statements to Mr. Chernenko and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, TRANS-WEST violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because TRANS-WEST did not record the time Mr. Chernenko and other aggrieved employees spent working off-the-clock, TRANS-WEST did not list the correct amount of gross wages and net wages earned by Mr. Chernenko and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TRANS-WEST failed to accurately list the total number of hours worked by Mr. Chernenko and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TRANS-WEST willfully failed to maintain accurate payroll records for Mr. Chernenko and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable

IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TRANS-WEST engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Chernenko and other aggrieved employees, in violation of section 1198. Also, in light of TRANS-WEST’s failure to provide Mr. Chernenko and other aggrieved employees with second 30-minute meal periods to which they were entitled, TRANS-WEST kept no records of meal start and end times for second meal periods.

Because TRANS-WEST failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Chernenko and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Chernenko and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TRANS-WEST failed to pay Mr. Chernenko and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, TRANS-WEST willfully failed to pay Mr. Chernenko and other aggrieved employees who are no longer employed by TRANS-WEST all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving TRANS-WEST's employ.

Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11040 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11040(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, TRANS-WEST violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11040(5)(A), because TRANS-WEST failed to pay Mr. Chernenko and other aggrieved employees reporting time pay when they reported to work for their usual or scheduled shift but were put to work for less than half of their usual or scheduled day's work.

TRANS-WEST had a company-wide practice of sending Mr. Chernenko and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Chernenko and other aggrieved employees for half of their scheduled shift. For example, TRANS-WEST's managers and/or dispatchers sent Mr. Chernenko

home before he had an opportunity to work at least half of his scheduled shift, but on information and belief, Mr. Chernenko was only paid for the time he had worked. Although Mr. Chernenko and other aggrieved employees reported to work based on the schedule that was provided to them, TRANS-WEST would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, TRANS-WEST did not pay Mr. Chernenko and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 4-2001, further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

First, during the relevant time period, Mr. Chernenko and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but TRANS-WEST failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Chernenko was required to use his personal cellular phone to respond to calls from his dispatcher to discuss work-related matters, such as instructions on job duties, and to send pictures of jobsites to his supervisor. Although TRANS-WEST required Mr. Chernenko and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TRANS-WEST failed to reimburse them for these costs.

Second, during the relevant time period, TRANS-WEST had a company-wide policy of requiring Mr. Chernenko and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. Specifically, TRANS-WEST required Mr. Chernenko and other aggrieved to travel to distant jobsites and assignments, but did not reimburse them for all travel expenses. For example, TRANS-WEST sometimes required Mr. Chernenko to drive his personal vehicle for 42 miles or more from TRANS-WEST's facility in Bakerfield, CA and/or from Mr. Chernenko's home in Bakersfield, California, to various jobsites, including those in McKittrick, California. Although TRANS-WEST required Mr. Chernenko and other aggrieved employees to utilize their own vehicles to carry out their work-related responsibilities, TRANS-WEST did not reimburse them for all of their travel expenses.

Third, during the relevant time period, TRANS-WEST, on a company-wide basis, expected Mr. Chernenko and other aggrieved employees to wear uniform items, including collared shirts and hats, bearing the company logo. However, TRANS-WEST did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, TRANS-WEST only provided Mr. Chernenko with one (1) shirt and one (1) hat at the time of hire. Because TRANS-WEST failed to provide Mr. Chernenko with an adequate number of uniform items, Mr. Chernenko had to wash his uniform more frequently than he would otherwise do laundry, and incur expenses in doing so. Thus, TRANS-WEST failed to maintain the uniforms it required Mr. Chernenko and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

TRANS-WEST could have provided Mr. Chernenko and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and an adequate number of uniform items or access to laundering services. Or, TRANS-WEST could have reimbursed employees for the costs of their mobile device usage, mileage and travel expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, TRANS-WEST passed these operating costs onto Mr. Chernenko and other aggrieved employees. At all relevant times, Mr. Chernenko did not earn at least two (2) times the minimum wage.

Thus, TRANS-WEST had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Chernenko and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code section 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

TRANS-WEST failed to provide Mr. Chernenko and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). TRANS-WEST's failure to provide Mr. Chernenko and other aggrieved employees with written notice of basic information regarding their employment with TRANS-WEST is in violation of Labor Code section 2810.5.

Mr. Chernenko and other aggrieved employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TRANS-WEST into compliance with Labor Code section 2810.5, pursuant to Labor Code section 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." TRANS-WEST, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Chernenko's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Chernenko seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Chernenko, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against TRANS-WEST for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Chernenko seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Chernenko's reasonable attempt to settle his dispute with TRANS-WEST prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform TRANS-WEST of Mr. Chernenko's aforementioned grievances and the proposed remedies as detailed below, while affording TRANS-WEST a reasonable opportunity to satisfy Mr. Chernenko's demands.

Demand is hereby made that TRANS-WEST shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. TRANS-WEST shall pay Mr. Chernenko and all other aggrieved employees employed by TRANS-WEST at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TRANS-WEST shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all reporting time pay.

3. TRANS-WEST shall conduct a survey or interview all current and former aggrieved employees in California who worked for TRANS-WEST in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided and the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay for mobile device expenses, mileage and travel expenses, and laundering expenses, with the investigation to be completed within 60 days.
4. TRANS-WEST shall pay Mr. Chernenko and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. TRANS-WEST also shall pay Mr. Chernenko and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. TRANS-WEST shall pay accrued legal interest to Mr. Chernenko and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. TRANS-WEST shall provide Mr. Chernenko and all aggrieved employees employed by TRANS-WEST at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
7. TRANS-WEST shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
8. TRANS-WEST provide pay all aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
9. TRANS-WEST shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TRANS-WEST's benefit, including, but not limited to, costs of mobile device usage, mileage and travel expenses, and laundering expenses, or other expenditures, as required by Labor Code section 2802.
10. TRANS-WEST shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. TRANS-WEST shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 4-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

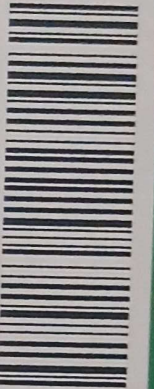
A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: TRANS-WEST SECURITY SERVICES, INC. (via U.S. Certified Mail); TRANS-WEST SERVICES, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067

7022 2410 0000 2265 0519



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8503 CRIPPEN STREET
BAKERSFIELD, CA 93311

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B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
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Service Type

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