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Attorneys for Plaintiff,
Alvaro Castro on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
RANCHO CUCAMONGA DISTRICT

JAN 13 2025

By Sabrina Jamison
Sabrina Jamison, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

Alvaro Castro, individuals, on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

Southwest Mobile Storage, Inc., an Arizona
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.:

CIVRS 2500191

REPRESENTATIVE ACTION

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

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

4 NATURE OF THE ACTION

5 1. Plaintiff Alvaro Castro worked as an employee for Defendant Southwest Mobile
6 Storage, Inc. and Does 1-50 (collectively “Defendant”). Defendant operates a shipping container
7 company. Plaintiff Alvaro Castro was hired by Defendant in June of 2021 and continued to work
8 for Defendant during the statutory period. Plaintiff worked as a fabricator at its Rancho
9 Cucamonga facility. At all times, Plaintiff worked on an hourly, non-exempt basis.

10 2. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
11 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
12 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
13 are aggrieved employees.

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

23 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
24 worked, including overtime hours worked; (2) failing to pay all wages owed twice per month; (3)
25 failing to pay minimum wage; (4) failing to pay wages due upon termination; (5) failing to provide
26 rest breaks; (6) failing to provide timely meal breaks; (7) failing to provide proper cool-down rest
27 periods; (8) failing to provide safe working conditions – excessive heat; (9) failing to reimburse
28 for required business expenses; (10) failing to provide suitable seating; (11) failing to properly

1 accrue and pay for unpaid vacation; (12) failing to provide accurate itemized wage statements and
2 violating record keeping requirements. Defendant is therefore liable for civil penalties under the
3 Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et*
4 *seq.*, as described more fully herein.

5 THE PARTIES

6 5. Plaintiff Alvaro Castro is a resident of the State of California and was hired by Defendant
7 in June of 2021 and continued to work for Defendant during the statutory period. Plaintiff worked
8 as a fabricator at its Rancho Cucamonga facility.

9 6. Defendant Southwest Mobile Storage, Inc., is an Arizona corporation authorized to do
10 business and doing business in California with the capacity to sue and to be sued, and doing
11 business, in the county of San Bernardino, State of California.

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

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

24 JURISDICTION AND VENUE

25 9. Venue is proper in this judicial district because Defendant conducts business in this
26 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
27 in this case that arose in this county.
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1 10. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
2 the Superior Court and will be established according to proof at trial. Based on information,
3 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
4 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
5 (\$25,000).

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

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

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

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

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

22 16. Defendant, and each of them, has committed the following violations of the California
23 Labor Code:

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

25 (Cal. Lab. Code §§218, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, IWC Wage
26 Orders)

27 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
28 incorporate said paragraphs herein by reference.

1 18. The Wage Orders define “hours worked” as “the time during which an employee is
2 subject to the control of an employer, and including all the time the employee is suffered or
3 permitted to work, whether or not required to do so.” Defendant has been engaged in many
4 unlawful employment practices which resulted in underpayment for hours worked each pay period,
5 including overtime hours worked, as more fully set forth below. Defendant has also failed to pay
6 the required minimum wage for all hours worked and has failed to pay all wages owed twice per
7 month.

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

11 20. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked
12 off the clock and were routinely subjected to periods wherein they were under the Defendant’s
13 control but not compensated for their time.

14 21. Plaintiff and aggrieved employees would frequently come into work early to have to
15 turn on his laptop and tablet in order to have his electronics running at the start of his work shift.
16 Additionally, Plaintiff and his coworkers would often be required to clock out then finish his work
17 while off-the-clock.

18 22. Work Performed During Unpaid Meal Periods. As more fully set forth below,
19 Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less
20 than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and
21 512.

22 23. For example, Plaintiff would often have his meal breaks interrupted by his managers
23 who would ask him to help them with tasks. Plaintiff and aggrieved employees would need to
24 return to work prior to the end of their 30 minute meal period, and were frequently required to
25 perform work while still clocked out for lunch.

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

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

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

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

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

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

13 **Failure to Pay Minimum Wage**

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

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

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

20 30. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
21 result of Defendant's practices described above. Employees were paid zero wages for time spent
22 working off the clock. Moreover, based on Defendant's unlawful conduct described herein, and
23 because Plaintiff and the aggrieved employees were paid at or near minimum wage, employer's
24 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
25 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the
26 Wage Orders. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et*
27 *seq.*

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1 **Failure to Pay Wages Due Upon Termination**

2 (Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

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

5 32. An employee who is discharged must be paid all of his or her wages, including accrued
6 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
7 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
8 Plaintiff at the time employment terminated.

9 33. Defendant willfully failed to pay employees who are no longer employed by it all
10 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
11 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
12 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
13 Cal. Lab. Code § 2698 *et. seq.*

14 **Failure to Provide Rest Breaks**

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

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

18 35. Defendant failed to maintain a compliant rest period policy and practice that provides
19 its employees with off-duty rest periods as required by California law. Plaintiff reports that
20 employees frequently missed rest periods as a result of Defendant's staffing and business practices,
21 and that rest breaks were not scheduled into daily shifts.

22 36. Plaintiff and aggrieved employees would sometimes miss their rest breaks. In addition
23 to their missed rest breaks, their rest breaks would often be taken late, interrupted, and/or
24 shortened. Defendant also failed to provide a third rest break whenever Plaintiff aggrieved
25 employees worked over ten (10) hours.

26 37. Rest periods were either less than ten minutes, not provided, interrupted or late, "on
27 duty," or not scheduled before and after a meal period for shifts greater than six hours, as
28 prescribed by California law because Defendant: (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 Defendant 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.

38. The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Defendant must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

39. Defendant 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 Orders. When breaks

1 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
2 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
3 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 et. Seq.

4 40. Rest break- Walk time. Rest breaks were consistently under ten (10) minutes because
5 employees were required to return back to their workstations within ten (10) minutes. However,
6 the break facility was located about two (2) to five (5) minutes away from the work areas,
7 significantly cutting into the employees' required 10-minute breaks.

8 41. Legally Compliant Bathrooms. California Labor Code §2350 requires employers to
9 provides that “[e]very factory, workshop, mercantile or other establishment in which one or more
10 persons are employed, shall be kept clean and free from the effluvia arising from any drain or other
11 nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet
12 facilities for the use of the employees.” Defendant violated §2350 by failing to provide bathrooms
13 for employees. Defendant further violated 8 CCR §3457(c) by failing to provide adequate toilet
14 and handwashing facilities.

15 42. Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times,
16 operational, maintained in a clean and sanitary condition, and kept in good repair. Written records
17 of service and maintenance shall be maintained and retained for two years.” Labor Code §6712
18 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair
19 at all times, including written records of that service and maintenance.” Moreover, “any employer
20 who fails to provide the facilities required by the field sanitation standard shall be assessed a civil
21 penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code
22 §6712. Further, the public policy of the State of California as codified, expressed and mandated in
23 Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps
24 to provide a safe and secure workplace.

25 43. Plaintiff and aggrieved employees were not provided with adequate restroom facilities
26 and in fact were required to use filthy porta potties. In addition to the filthy and unsanitary
27 conditions of the porta potties, the porta potties were often surrounded in mud which made them
28 difficult to safely access.

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

46. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Defendant failed to pay all penalty pay to Plaintiff or aggrieved employees for noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing to meet the requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. Seq.*

48. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Defendant: (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

Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Defendant unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

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

50. Labor Code section 226.7, subdivision (c) provides:

A. 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.

51. Defendant required Plaintiff and aggrieved employees to consistently work in temperatures far exceeding eighty (80) degrees Fahrenheit, many times over 100 degrees, and did not provide adequate cool down period opportunities.

52. Although Plaintiff and aggrieved employees regularly worked in over 100-degree weather, they were not provided with a place to u in a shaded area. Because the break room was a 2–5-minute walk from the work area and because there was no seating provided in the work area by the Defendant, there was no opportunity to be able to cool down.

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1 **Failure to Provide Safe Working Conditions – Excessive Heat**

2 (Cal. Labor Code §1198, Wage Order)

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

5 54. Defendant's workplaces would get unsafely hot. Plaintiff and aggrieved employees
6 were forced to work in incredibly hot and unventilated conditions reaching temperatures of over
7 100 degrees.

8 55. Wage Orders ¶15 require:

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

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

15 56. Defendant failed to provide sufficient climate control and cool down facilities and
16 breaks for employees to work safely in the heat. By violating the wage order, Defendant is liable
17 for civil penalties pursuant to §2698 *et. Seq.*

18 **Failure to Reimburse for Required Business Expenses**

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

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

22 58. Labor Code §2802 requires employers to indemnify employees for necessary
23 expenditures or losses incurred by employees in direct consequence of the discharge of duties.
24 Accordingly, Defendant is liable for civil penalties under PAGA §2699 et seq.

25 59. Plaintiff and aggrieved employees were required to use their personal cell phones for
26 work related communications, although Defendant did not reimburse them in any way for the
27 expense of their personal cell phone use as required by the Labor Code. Additionally, Plaintiff was
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1 required to purchase his own work tools, welding jacket, and helmet which he was never
2 reimbursed for as required by the Labor Code.

3 **Failure To Provide Suitable Seating**

4 (Lab. Code section 1198 and Wage Orders)

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

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

9 62. The Wage Orders provide that:

10 A. All working employees shall be provided with suitable seats when
11 the nature of the work reasonably permits the use of seats.

12 B. When employees are not engaged in the active duties of their
13 employment and the nature of the work requires standing, an adequate number
14 of suitable seats shall be placed in reasonable proximity to the work area and
15 employees shall be permitted to use such seats when it does not interfere with
16 the performance of their duties.

17 63. At all relevant times, Defendant failed to provide Plaintiff and aggrieved employees
18 with suitable seating during their employment as required by section 12 of the applicable Wage
19 Order. Plaintiff and other aggrieved employees were not provided with seating during shifts in
20 which they worked at positions which would reasonably permit the use of seating, nor was seating
21 provided within a 3-4 minute walk from work areas for necessary breaks. Accordingly, Plaintiff,
22 on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698
23 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

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1 **Failure to Properly Accrue and Pay for Unpaid Vacation**

2 (Cal. Lab. Code §227.3 and 2698 *et seq.*)

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

5 65. Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer
6 policy provides for paid vacations, and an employee is terminated without having taken off his
7 vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this
8 case, Defendant failed to pay all accrued vacation wages to Plaintiff and aggrieved employees
9 upon termination. Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

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

11 **Requirements**

12 (Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq*)

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

15 67. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
16 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
17 and keep accurate records as required by §1174(d). Wage statements issued to Plaintiff and
18 aggrieved employees fail to reflect the actual hours, including overtime hours, worked by
19 employees. Wage statements also fail to state meal and rest premium wages, and reimbursements
20 for business expenses.

21 68. Such failures caused injury to Plaintiff and others, by, among other things, impeding
22 them from knowing the total hours worked and the amount of wages to which they are and were
23 entitled. Defendant knowingly and intentionally failed to list all the items described above.
24 Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

25 69. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
26 employees to sign employment-related contracts and documents, including documents that
27 contained unlawful terms of employment.
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1 **FIRST CAUSE OF ACTION**

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

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

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

6 71. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by
7 Defendant during the applicable statutory period and suffered one or more of the Labor Code
8 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other
9 current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus
10 reasonable attorneys’ fees and costs.

11 72. Plaintiff seeks to recover the PAGA civil penalties through a representative action
12 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
13 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

14 73. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
17 Labor Code §§218, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*,
18 IWC Wage Orders);
- 19 b. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and
20 2698 *et seq.*);
- 21 c. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194,
22 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- 23 d. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203,
24 227.3, 256 and 2698 *et seq.*)
- 25 e. Failure to Provide Rest Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698
26 *et seq.*);
- 27 f. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§ 226, 226.7, 512, 558,
28 1198, 2699 *et seq.*);

- g. Failure to Provide Proper Cool-Down Rest Periods (Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*);
- h. Failure to Provide Safe Working Conditions – Excessive Heat (Cal. Labor Code §1198, Wage Order);
- i. Failure to Reimburse for Required Business Expenses (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*);
- j. Failure To Provide Suitable Seating (Lab. Code section 1198 and Wage Orders);
- k. Failure to Properly Accrue and Pay for Unpaid Vacation (Cal. Lab. Code §227.3 and 2698 *et seq.*);
- l. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq.*);

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

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

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

77. Plaintiff and the other current and former employees of Defendant is aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged

herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

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

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

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

PRAYER FOR RELIEF

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

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

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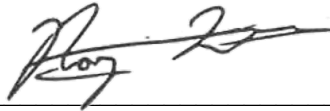
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- 1 4. Pre-judgement and post-judgement interest as provided by law; and
2 5. Such other and further relief that the Court may deem just and proper.
3

4 DATED: December 27, 2024

KOUL LAW FIRM, APC

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8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiff Alvaro Castro, and all
10 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 21, 2024

Via E-filing:

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

Via Certified U.S. Mail:

Southwest Mobile Storage, Inc.
1005 North 50th Street
Phoenix, AZ 92656

Southwest Mobile Storage, Inc.
9551 Lucas Ranch Road
Rancho Cucamonga, CA 91730

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Alvaro Castro
Employer: Southwest Mobile Storage, Inc.

Dear Sir or Madam:

Claimant Alvaro Castro has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, and Sean Blakely, Esq. and Paul K. Haines, Esq. of Haines Law Group, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, Southwest Mobile Storage, Inc. (hereafter “Employer”). Employer operates a shipping container company. Claimant was hired by Employer in June of 2021 and continued to work for Employer during the statutory period. Claimant worked as a fabricator at its Rancho Cucamonga facility.

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

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

(Cal. Labor Code §§218, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, IWC Wage Orders)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and 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 overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

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

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 would frequently come into work early to have to turn on his laptop and tablet in order to have his electronics running at the start of his work shift. Additionally, Claimant and his coworkers would often be required to clock out then finish his work while off-the-clock.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512.

For example, Claimant would often have his meal breaks interrupted by his managers who would ask him to help them with tasks. Claimant and aggrieved employees would need to return to work prior to the end of their 30 minute meal period, and were frequently required to perform work while still clocked out for lunch.

Failure to Pay All Wages Owed Twice Per Month

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

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

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees

were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

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

Failure to 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. Employees were paid zero wages for time spent working off the clock. Moreover, based on Employer's unlawful conduct described herein, 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 the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

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

Employer 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 employees frequently missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Claimant and aggrieved employees would sometimes miss their rest breaks. In addition to their missed rest breaks, their rest breaks would often be taken late, interrupted, and/or shortened. Employer also failed to provide a third rest break whenever Claimant aggrieved employees worked over ten (10) hours.

Rest periods were 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.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee’s regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

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 Orders. 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.

Rest break- Walk time

Rest breaks were consistently under ten (10) minutes because employees were required to return back to their workstations within ten (10) minutes. However, the break facility was located about two (2) to five (5) minutes away from the work areas, significantly cutting into the employees' required 10-minute breaks.

Legally Compliant Bathrooms

California Labor Code §2350 requires employers to provide that “[e]very factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees.” Employer violated §2350 by failing to provide bathrooms for employees. Employer further violated 8 CCR §3457(c) by failing to provide adequate toilet and handwashing facilities.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “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.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace.

Claimant and aggrieved employees were not provided with adequate restroom facilities and in fact were required to use filthy porta potties. In addition to the filthy and unsanitary conditions of the porta potties, the porta potties were often surrounded in mud which made them difficult to safely access.

Failure to Provide Timely Meal Breaks

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

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee

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

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing to meet the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

In this case, Claimant and Claimant’s coworkers frequently missed first and second meal periods. When meal periods were provided, they were often late, short, and/or interrupted. As explained above, Employer would often interrupt employee meal periods with questions and work requests. Claimant observed this unlawful meal period practice impacting all the coworkers he observed.

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

Failure to Provide Proper Cool-Down Rest Periods

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

Labor Code section 226.7, subdivision (c) provides:

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, many times over 100 degrees, and did not provide adequate cool down period opportunities.

Although Claimant and aggrieved employees regularly worked in over 100-degree weather, they were not provided with a place to u in a shaded area. Because the break room was a 2–5-minute walk from the work area and because there was no seating provided in the work area by the Employer, there was no opportunity to be able to cool down.

Failure to Provide Safe Working Conditions – Excessive Heat

(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 unventilated conditions reaching temperatures of over 100 degrees.

Wage Orders ¶15 require:

(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.

Employer failed to provide sufficient climate control and cool down facilities and breaks for employees to work safely in the heat. 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. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Claimant and aggrieved employees were required to use their personal cell phones for work related communications, although Employer did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Additionally, Claimant was required to purchase his own work tools, welding jacket, and helmet which he was never reimbursed for as required by the Labor Code.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Orders)

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

The Wage Orders provide that:

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

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 12 of the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating, nor was seating provided within a 3-4 minute walk from work areas for necessary breaks. Accordingly, Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Properly Accrue and Pay for Unpaid Vacation

(Cal. Lab. Code §227.3 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this case, Employer failed to pay all accrued vacation wages to Claimant and aggrieved employees upon termination. Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

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

(Cal. Labor Code §§ 226, 246, 248, 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). Wage statements issued to Claimant and aggrieved employees fail to reflect the actual hours, including overtime hours, worked by employees. Wage statements also fail to state meal and rest premium wages, and reimbursements for business expenses.

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 list all the items described above. 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, including 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 Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Respectfully submitted,

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

Nazo Koulloukian, Esq.
Attorneys for Claimant