



November 7, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Mark Vazquez v. Swipejobs, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Mark Vazquez in claims arising from his employment with Swipejobs, LLC; Nelson Name Plate Company dba Nelson Miller Group; and DOES 1 through 100 (collectively “SJ”). Mr. Vazquez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to SJ’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Mr. Vazquez and the other aggrieved employees engage in interstate commerce activities in the course of their job duties. As such, Mr. Vazquez and the other aggrieved employees are “Transportation Workers” exempt from arbitration within the definition of the Federal Arbitration Act. *See Southwest Airlines Co. v Saxon*, 596 U.S. 450 (2022); *Carmona v. Domino’s Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023); *Saige et al. v. U.S. District Court for the Central District of California*, No. 24-4072 (9th Cir. July 18, 2024).

During Mr. Vazquez’s employment with SJ he performed work for Nelson Name Plate Company dba Nelson Miller Group (“NNPC”). As such, NNPC is jointly liable with SJ for all civil legal responsibility and civil liability for the payment of wages, including sums payable to an employee or the state of California based upon any failure to pay wages, pursuant to Labor Code §2810.3.¹

SJ, a California corporation, is in the business importing and exporting goods and materials, namely goods and materials utilized in the aerospace and automotive industries destined for interstate commerce. Mr. Vazquez worked for SJ from approximately November 2023 through May 2024, as a Quality Specialist. Mr. Vazquez’s job duties included working with SJ’s customers and suppliers, working with vendors and customer service representatives, and performing quality control inspections on aerospace products,

¹ Accordingly, based in part on Labor Code § 2810.3 and common law theories of joint employer liability, all allegations in this letter regarding unpaid wages alleged against SJ are also alleged against NNPC.

automotive products, and electrical products, all destined for interstate commerce. Mr. Vazquez was generally scheduled to work five days per week, from Monday to Friday from approximately 6:00 a.m. until approximately 2:30 p.m. However, as explained below, Mr. Vazquez routinely performed work beyond his prescheduled hours, including overtime hours, all of which went wholly uncompensated. Mr. Vazquez was paid at a rate of approximately \$24.00 per hour at the time of his separation with SJ.

For purposes of this letter, the “aggrieved employees” whom Mr. Vazquez seeks to represent are the other non-exempt employees of SJ in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Mr. Vazquez’s employment with SJ, Mr. Vazquez and other aggrieved employees were not paid for all hours worked as SJ would not accurately keep track of their hours worked. Upon information and belief, the time records maintained by SJ were not reflective of the actual number of hours that Mr. Vazquez and other aggrieved employees actually worked. Indeed, SJ maintained no formal timekeeping system whatsoever throughout the duration of Mr. Vazquez’s employment with SJ. Rather, Mr. Vazquez and other aggrieved employees were simply compensated based on their prescheduled hours despite work needs requiring them to work in excess of their prescheduled hours on a near daily basis. For example, Mr. Vazquez estimates that he commenced work prior to 6:00 a.m. nearly every shift that he worked, often around 5:45 a.m. constituting at least 15 minutes worked off-the-clock prior to his hours worked being compensated. Furthermore, Mr. Vazquez estimates that he worked beyond 2:30 p.m., his scheduled stop time, on every single shift that he worked in 2024. Mr. Vazquez estimates that on average, he would work until 2:45 p.m. each of these shifts, and often worked past 3:00 p.m. However, despite Mr. Vazquez and other aggrieved employees working around 30 minutes off-the-clock before and after their scheduled shifts as a result of SJ’ practices of only compensating them for their prescheduled hours, SJ did not ever compensate them for this time necessarily worked, most of which should have been paid at an overtime rate of pay. Finally, as explained below, Mr. Vazquez and other aggrieved employees were instructed by their supervisors and site managers to work through the entirety of their shifts without any time for meal periods, but were not compensated for these hours necessarily worked due to SJ’ “auto-deduct” policy which served to deprive Mr. Vazquez and other aggrieved employees of pay that they were duly entitled to as a consequence of working through their meal periods. Indeed, SJ would simply falsely manipulate time records to indicate that 30 minute meal periods were exercised by Mr. Vazquez and other aggrieved employees, when in reality they were not. As a consequence of SJ’ policies and practices as described above, Mr. Vazquez and other aggrieved employees have been deprived of all minimum wages and overtime wages to which they were duly entitled. Consequently, due to SJ’s unlawful timekeeping and payment policies and practices that failed to compensate for all hours worked, Mr. Vazquez and other aggrieved employees have been deprived of all required minimum, overtime wages, and double time wages earned.

Furthermore, Mr. Vazquez and other aggrieved employees worked overtime hours, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, SJ systematically and intentionally failed to pay overtime compensation due to Mr. Vazquez and other aggrieved employees when they worked off the clock, which as described above amounted to up to an hour per shift worked. Further, when Mr. Vazquez and other aggrieved employees worked overtime, they were not always compensated at the correct regular rate, if at all. As a result, SJ failed to ensure that Mr. Vazquez and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Vazquez and other aggrieved employees received proper overtime wages for all overtime hours worked.

Mr. Vazquez and other aggrieved employees were not authorized to take their full legally required 10-minute rest periods, in part due to SJ's chronic understaffing of its facilities. Indeed, as described above, Mr. Vazquez and other aggrieved employees were made to work through the entirety of their shifts, with the exception of sporadic meal periods, without being afforded all requisite rest periods to which they were duly entitled. Mr. Vazquez estimates that he experienced a rest period violation, whether it be only being authorized to exercise one rest period, or not being authorized to exercise any rest periods at all, on at least 75% of the shifts that he worked. Despite SJ failures to authorize and permit Mr. Vazquez and other aggrieved employees to exercise all rest periods to which they were entitled, SJ never provided Mr. Vazquez and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, SJ maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Vazquez and other aggrieved employees were not authorized to take lawful rest periods.

SJ also rarely, if ever, provided Mr. Vazquez and other aggrieved employees with a compliant first meal period when they worked shifts in excess of 5.0 hours. Mr. Vazquez and other aggrieved employees rarely, if ever, were entitled to exercise the use of a thirty-minute uninterrupted meal period despite always working at least 8.0 hours in a day. Rather, Mr. Vazquez and other aggrieved employees' meal periods were frequently i) missed entirely; ii) shortened; iii) not exercised until after the fifth hour worked; and or iv) interrupted by management to discuss work-related matters and attend meetings. Furthermore, to the extent that Mr. Vazquez and other aggrieved employees ever received anything resembling a meal period, they were inherently non-compliant as SJ did not permit Mr. Vazquez and other aggrieved employees to leave the premises of their job-sites at any point during their shifts. Additionally, upon information and belief, SJ did not employ any practices or procedures to accurately track the meal periods of Mr. Vazquez and other aggrieved employees even on those occasions where they had an opportunity to exercise one. Mr. Vazquez's shortened, late, and on-duty meal periods were a direct result of SJ's policy/practice. SJ also failed to provide second meal periods when Mr. Vazquez and other aggrieved employees worked shifts in excess of 10.0 hours. Mr. Vazquez frequently worked in excess of 10 hours during his employment, but he cannot recall

receiving a second meal period. On those occasions when Mr. Vazquez and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, SJ failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant time period, SJ maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not authorized or permitted to Mr. Vazquez and the other aggrieved employees.

SJ failed to adequately reimburse Mr. Vazquez for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Vazquez and other aggrieved employees to utilize their personal cellular phones in the performance of their job duties. Mr. Vazquez and other aggrieved employees conducted all work-related communications on their personal cellular phones, such as discussions with supervisors regarding assignments, scheduling, and any other matter that arose during their shifts and often after the conclusion of their shifts, but did not ever receive reimbursements for the necessary use of their personal cellular phones.

SJ failed to meet its obligations to provide paid sick leave to Mr. Vazquez and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Vazquez and other aggrieved employees were not provided paid sick leave on all of those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b).

As a result of SJ’s failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof to Mr. Vazquez and other aggrieved employees, SJ has maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements.

Furthermore, SJ violated Labor Code § 204 by failing to pay Mr. Vazquez and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, SJ failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Vazquez and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer’s workers’ compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an

obligation to provide these disclosures to Mr. Vazquez and other aggrieved employees, SJ failed to do so in violation of Labor Code § 2810.5.

As described above, SJ committed the following violations of the Labor Code, and Industrial Welfare Commission (“IWC”) Wage Orders:

Minimum Wage Violations

SJ was required to pay Mr. Vazquez and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; The IWC Wage Orders § 4. As alleged above, SJ maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Vazquez and other aggrieved employees whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Vazquez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

SJ was required to pay Mr. Vazquez and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; The IWC Wage Orders, § 3. The IWC Wage Orders, § 3 requires an employer to pay overtime wages when an employee’s hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, SJ caused Mr. Vazquez and other aggrieved employees to work overtime hours but did not compensate Mr. Vazquez and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, SJ failed to provide Mr. Vazquez and other aggrieved employees with all required and compliant meal periods due to SJ’s meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. See Labor Code §§ 226.7 and 512; The IWC Wage Orders, § 11. As a result, Mr. Vazquez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. See Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... 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.”).

Rest Period Violations

As alleged above, SJ also failed to authorize and permit Mr. Vazquez and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; The IWC Wage Orders, § 12. As a result, Mr. Vazquez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.”)

Failure to Reimburse for Necessary Business Expense

At all relevant times herein, SJ was subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”. Due to SJs’ unlawful policy and practice of requiring employees to use their personal cellular phones in the performance of their job duties, SJ has violated Labor Code §§ 2802 and 2804.

Wage Statement Violations

SJ was required to furnish Mr. Vazquez and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); The IWC Wage Orders, § 7. As a result of SJ’s failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, SJ maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Vazquez and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. SJ failed to timely pay Mr. Vazquez and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees’ separation of employment. Pursuant to Labor Code § 203, SJ’s failure to pay all final wages due to Mr. Vazquez and other aggrieved employees was willful and, consequently, entitles Mr. Vazquez and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day SJ failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an “aggrieved employee,” Mr. Vazquez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Vazquez’s own investigation, and on information and belief, SJ committed and continues to commit the following Labor Code violations:

- a. SJ and NNPC violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Vazquez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. SJ and NNPC violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Vazquez and other aggrieved employees all overtime compensation earned;
- c. SJ and NNPC violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Vazquez and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations;
- d. SJ and NNPC violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Vazquez and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Vazquez and other aggrieved employees at their respective regular rates of compensation;
- e. SJ and NNPC violated Labor Code § 226 by failing to furnish Mr. Vazquez and other aggrieved employees with accurate and compliant itemized wage statements;
- f. SJ and NNPC violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Vazquez and other aggrieved employees;
- g. SJ and NNPC violated Labor Code § 204 by failing to pay Mr. Vazquez and other aggrieved employees all wages earned at least twice during each calendar month;
- h. SJ and NNPC violated Labor Code § 245.5 by failing to permit and authorize Mr. Vazquez and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- i. SJ and NNPC violated Labor Code §§ 2802 by failing to reimburse Mr. Vazquez and other aggrieved employees for all necessary business expenditures;

- j. SJ and NNPC violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Vazquez and other aggrieved employees; and
- k. SJ and NNPC violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Vazquez and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and SJ if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC

A handwritten signature in black ink, appearing to read 'Ethan C. Surls', with a long horizontal line extending from the end of the signature.

Ethan C. Surls

cc: Swipejobs, LLC (via certified mail)
cc: Nelson Name Plate Company dba Nelson Miller Group (via certified mail)