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VIA ONLINE SUBMISSION

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

Subject: *Robert Kemper v. Swissport USA, Inc., et al.*

Dear PAGA Administrator:

This office represents Robert Kemper in connection with his claims under the California Labor Code. Mr. Kemper was an employee of SWISSPORT USA, INC.; SWISSPORT FUELING INC.; SWISSPORT SA, LLC; and/or SWISSPORT SA FUEL SERVICES, LLC. For the purpose of this letter, Mr. Kemper collectively refers to these entities as “SWISSPORT.”

The employers may be contacted directly at the addresses below:

SWISSPORT USA, INC.
227 FAYETTEVILLE ST 9TH FLOOR
RALEIGH, NC 27601

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST 9TH FLOOR
RALEIGH, NC 27601

SWISSPORT SA, LLC
227 FAYETTEVILLE STREET, SUITE 900
RALEIGH, NC 27601

SWISSPORT SA FUEL SERVICES, LLC
227 FAYETTEVILLE ST SUITE 900
RALEIGH, NC 27601

Mr. Kemper 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. Kemper seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SWISSPORT 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.

SWISSPORT employed Mr. Kemper as an hourly paid, non-exempt employee from approximately June 2023 to October 2023. Mr. Kemper worked for SWISSPORT as a Fleet Mechanic Level II and Ground Service Equipment Mechanic at its San Francisco International (“SFO”) location. During his employment, Mr. Kemper typically worked eight (8) or more hours per day and five (5) days per week. By the end of his employment, Mr. Kemper was compensated approximately \$39.00 per hour.

His job duties included, without limitation, maintaining, repairing, and servicing SWISSPORT's fleet of ground support equipment, such as aircraft tugs, baggage carts, and fuel trucks used at airports.

SWISSPORT committed each of the following Labor Code violations against Mr. Kemper, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):¹

SWISSPORT's Company-Wide and Uniform Payroll and HR Practices

SWISSPORT USA, INC. and SWISSPORT FUELING INC. are Delaware corporations; and SWISSPORT SA, LLC and SWISSPORT SA FUEL SERVICES, LLC are Delaware limited liability companies. Together, they are world's leading independent provider of airport ground services and air cargo handling. Upon information and belief, SWISSPORT maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Raleigh, North Carolina, for all non-exempt, hourly paid employees working for SWISSPORT in California, including Mr. Kemper and other aggrieved employees. At all relevant times, SWISSPORT issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Kemper and other aggrieved employees, regardless of their location or position.

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

¹ These facts, theories, and claims are based on Mr. Kemper's experience and counsel's review of those records currently available relating to Mr. Kemper'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. Kemper 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.

SWISSPORT willfully failed to pay all overtime wages owed to Mr. Kemper and other aggrieved employees. During the relevant time period, Mr. Kemper and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) 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, SWISSPORT had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Kemper 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. On information and belief, this policy of limiting overtime, coupled with SWISSPORT's practices of understaffing and assigning heavy workloads (*see infra*), led Mr. Kemper and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, about once per week, Mr. Kemper was required to clean and organize the work area, including tasks such as sweeping, mopping, and disposing of garbage left over from the previous night's shift, but was not permitted to clock in and record this time spent working. As another example, approximately twice per week, Mr. Kemper clocked out at the end of his shift, but was required to continue working to clean and re-organize the work area, including stacking tires, before he could leave for the day. Thus, SWISSPORT failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Kemper and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, SWISSPORT failed to implement a reliable timekeeping system to track and record Mr. Kemper's and other aggrieved employees' hours worked. SWISSPORT's timekeeping software often malfunctioned or had connectivity issues, which impeded Mr. Kemper and other aggrieved employees from accurately recording their hours worked. When SWISSPORT's timekeeping system malfunctioned or had connectivity issues, SWISSPORT's policy and/or practice was to have SWISSPORT's management record Mr. Kemper's and other aggrieved employees' hours worked. Upon information and belief, SWISSPORT's management altered, falsified, and/or otherwise failed to accurately record Mr. Kemper's and other aggrieved employees' clock-in and clock-out times. Essentially, due to the limitations of the timekeeping system, SWISSPORT's management maintained control and/or discretion over employees' clock-in and/or clock-out times. Thus, SWISSPORT failed to track time spent working before and after shifts, and Mr. Kemper and other aggrieved employees received no compensation for this time. To the extent SWISSPORT's timekeeping policies have taken away time worked that was eligible for overtime, Mr. Kemper and other aggrieved employees have been denied overtime pay for all hours worked.

Third, SWISSPORT had, and continue to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet time-sensitive repair deadlines. SWISSPORT's policies and/or practices resulted in a failure to provide Mr. Kemper and other aggrieved employees with adequate meal period coverage, and thus, Mr. Kemper and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. SWISSPORT also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Kemper and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Kemper often worked through all or part his meal periods due to lack of coverage and heavy workload. SWISSPORT did not compensate Mr. Kemper and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Additionally, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's management pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal period premiums that would need to be paid by SWISSPORT. Thus, SWISSPORT did not record all hours worked during meal periods, and Mr. Kemper and other aggrieved employees performed work during meal periods for which they were not paid.

SWISSPORT knew or should have known that as a result of these company-wide practices and/or policies, Mr. Kemper 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. Kemper 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. Kemper and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

SWISSPORT's failure to pay Mr. Kemper 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. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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. 9-2001 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, § 11090(2)(H) (defining "Hours Worked").

First, as set forth above, as a result of SWISSPORT's policy of limiting the amount of overtime employees could accrue, SWISSPORT required Mr. Kemper and other aggrieved employees to perform work off-the-clock before and after scheduled start and times to complete work-related tasks, such as cleaning and organizing the work area. SWISSPORT failed to track this time that Mr. Kemper and other aggrieved employees spent working off-the-clock, and Mr. Kemper and other aggrieved employees received no compensation for this time. As also set forth above, SWISSPORT's timekeeping system restricted Mr. Kemper and other aggrieved employees from accurately recording their hours worked due to frequent malfunctions. Instead, on information and belief, Mr. Kemper and other aggrieved employees were subject to SWISSPORT's management altering their time records and/or failing to accurately record their hours worked.

Second, as also stated, due to SWISSPORT's policies and/or practices of understaffing its facilities while assigning heavy workloads, which included pressuring employees to meet time-sensitive repair deadlines, and failing to schedule meal periods, Mr. Kemper 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.

Also, as stated above, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's managers pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, SWISSPORT systematically failed to pay Mr. Kemper and other aggrieved for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

SWISSPORT did not pay at least minimum wages for all hours worked by Mr. Kemper and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SWISSPORT 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, SWISSPORT regularly failed to pay at least minimum wages to Mr. Kemper 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. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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.

First, as stated, SWISSPORT had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressuring employees to meet time-sensitive repair deadlines, which has resulted in a lack of meal period coverage and prevented Mr. Kemper and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, SWISSPORT had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Kemper and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Kemper 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. Kemper was often required to work straight through his meal periods. As another example, as stated, Mr. Kemper was sometimes required to return early from his meal periods to keep up with SWISSPORT's pressure to meet time-sensitive repairs. Indeed, according to Mr. Kemper's time records, on September 4, 2023, he clocked in at the start of his meal period at 1:48 p.m. and clocked out for the end of his meal period at 2:14 p.m., resulting in Mr. Kemper taking a shortened meal period of 26 minutes. Additionally, Mr. Kemper sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage. For example, according to Mr. Kemper's time records, on September 29, 2023, he clocked in at the start of his shift at 8:32 a.m. and clocked out for his meal period at 3:08 p.m., working a total of six (6) hours and 36 minutes (or 6.60 hours), before he was able to take his meal period.

Second, as stated above, on information and belief, because SWISSPORT frowned upon employees accruing meal period premiums, SWISSPORT's management pressured Mr. Kemper and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, Mr. Kemper was required to clock out for his meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Third, SWISSPORT did not provide Mr. Kemper and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During his employment, Mr. Kemper worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Kemper 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.

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

Moreover, SWISSPORT 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. Kemper and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, SWISSPORT failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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, SWISSPORT regularly failed to authorize and permit Mr. Kemper and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SWISSPORT's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Kemper and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, SWISSPORT failed to schedule rest periods, which, coupled with SWISSPORT's failure to provide adequate rest period coverage, further led to Mr. Kemper and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, SWISSPORT maintained a company-wide on-premises rest period policy, which effectively required that Mr. Kemper and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Kemper and 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, SWISSPORT effectively maintained control over Mr. Kemper and other aggrieved employees during rest periods.

As a result of SWISSPORT's practices and policies, Mr. Kemper 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. Kemper missed most of his rest periods, because of the lack of rest period coverage and SWISSPORT's failure to schedule rest periods for employees.

SWISSPORT 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. Kemper and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, SWISSPORT failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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. SWISSPORT has not provided Mr. Kemper 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, SWISSPORT has knowingly and intentionally provided Mr. Kemper and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SWISSPORT issued uniform wage statements to Mr. Kemper 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, SWISSPORT violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SWISSPORT did not record the time Mr. Kemper and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SWISSPORT did not list the correct amount of gross wages and net wages earned by Mr. Kemper and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SWISSPORT failed to accurately list the total number of hours worked by Mr. Kemper 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), SWISSPORT willfully failed to maintain accurate payroll records for Mr. Kemper 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, SWISSPORT engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Kemper and other aggrieved employees, in violation of section 1198. Also, in light of SWISSPORT’s failure to provide Mr. Kemper and other aggrieved employees with second 30-minute meal periods to which they were entitled, SWISSPORT kept no records of meal start and end times for second meal periods.

Because SWISSPORT failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Kemper 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. Kemper 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. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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, SWISSPORT failed to pay Mr. Kemper and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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, SWISSPORT willfully failed to pay Mr. Kemper and other aggrieved employees who are no longer employed by SWISSPORT all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving SWISSPORT's employ.

Mr. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT 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 § 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. 9-2001, 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."

During the relevant time period, Mr. Kemper 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 SWISSPORT failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Kemper was required to use his personal cellular phone to communicate with equipment manufacturers to obtain service manuals and diagrams for repairing and servicing equipment. Although SWISSPORT required Mr. Kemper and other

aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, SWISSPORT failed to reimburse them for these costs.

SWISSPORT could have provided Mr. Kemper and other aggrieved employees with company-issued mobile devices, or, SWISSPORT could have reimbursed employees for the costs of their mobile device usage. Instead, SWISSPORT passed these operating costs onto Mr. Kemper and other aggrieved employees.

Thus, SWISSPORT 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. Kemper and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring SWISSPORT into compliance with the applicable IWC Wage Order and Labor Code section 2802, 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.” SWISSPORT, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Kemper’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Kemper 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 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Kemper, 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 SWISSPORT 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, and 2802.

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

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', with a stylized flourish extending to the right.

Alexander Lima

Copy: SWISSPORT USA, INC. (via U.S. Certified Mail); SWISSPORT FUELING INC. (via U.S. Certified Mail); SWISSPORT SA, LLC (via U.S. Certified Mail); and/or SWISSPORT SA FUEL SERVICES, LLC (via U.S. Certified Mail)

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



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KEMPER U.

SWISSPORT

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy)
☐ Return Receipt (electronic)

Postmark

Post

Total

Sen

Str

City

7022 2410 0000 2265 0663

SWISSPORT USA, INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

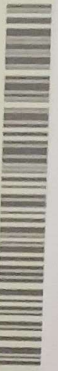
PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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RALEIGH, NC 27601



9590 8402 7706 2122 1530 26
2. Article Number (Transfer from Service Mark)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

□ Agent
□ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

Adult Signature

Adult Signature Restricted Delivery

Certified Mail

Certified Mail Restricted Delivery

Collect on Delivery

Collect on Delivery Restricted Delivery

Priority Mail Express®

Registered Mail™

Registered Mail Restricted Delivery

Signature Confirmation™

Signature Confirmation Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2265 0670

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227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

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☐ Return Receipt (electronic)

\$

Signature

KEMPTON V.
SWISSPORT

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601

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SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

SWISSPORT FUELING INC.
227 FAYETTEVILLE ST
9TH FLOOR
RALEIGH, NC 27601



9590 9402 7706 2122 1590 19

2. Article Number (Transfer from Service Label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

☐ Adult Signature

☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery

☐ Registered Mail™

☒ Certified Mail®

☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery

☐ Signature Confirmation™

☐ Collect on Delivery

☐ Signature Confirmation Restricted Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery

Domestic Return Receipt

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



7022 2410 0000 2265 0687

SWISSPORT SA, LLC
227 FAYETTEVILLE
STREET, SUITE 900
RALEIGH, NC 27601

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.

SWISSPORT SA, LLC
227 FAYETTEVILLE
STREET, SUITE 900
RALEIGH, NC 27601



9590 9402 7706 2122 4538 02
2. Article Number (Indicate from Service Label)

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

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KEMPER, V.

Extra Services & Fees (check box, add fee as appropriate)
Premium Receipt (hardcopy) \$

SWISSPORT

SWISSPORT SA, LLC
227 FAYETTEVILLE
STREET, SUITE 900
RALEIGH, NC 27601

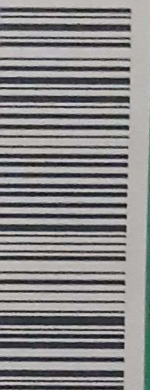
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Total \$
Surcharge \$
Size \$
City

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1875 Century Park, East, 1000
Los Angeles, CA. 90067

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☒ Return Receipt (hardcopy)

\$ 0.00

SWISS POST

Postmark

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☐ AA

☐ AB

☐ AC

☐ AD

☐ AE

☐ AF

☐ AG

☐ AH

☐ AI

☐ AJ

☐ AK

☐ AL

☐ AM

SWISSPORT SA FUEL

SERVICES, LLC

227 FAYETTEVILLE ST

SUITE 900

RALEIGH, NC 27601

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes
☐ No

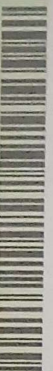
SWISSPORT SA FUEL

SERVICES, LLC

227 FAYETTEVILLE ST

SUITE 900

RALEIGH, NC 27601



Service Type

☐ Adult Signature

☒ Adult Signature Restricted Delivery

☐ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express[®]

☐ Registered Mail[™]

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

2. Article Number (Indicate from which label)

7022 2410 0000 2265 0694

7022 2410 0000 2265 0694

Restricted Delivery

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