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Superior Court of California,
County of Orange
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Clerk of the Superior Court
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6 Attorneys for Plaintiff JAVIER PASILLAS,
7 individually and on behalf of others similarly situated

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ORANGE

11 JAVIER PASILLAS, individually and on)
12 behalf of himself and others similarly situated,)

13 Plaintiff,)

14 vs.)

15)
16)
17)
18)
19 AGILITY FUEL SYSTEMS, INC., a)
Delaware Corporation, and DOES 1 through)
20 100, inclusive,)

21 Defendants.)
22)
23)
24)

CASE NO.: 30-2014-00701465-CU-OE-CXC
Judge Gail A. Andler

CLASS ACTION
COMPLAINT FOR DAMAGES AND
RESTITUTION

1. Failure to Provide Second Meal Periods or Compensation in Lieu Thereof (Labor Code §§ 226.7, 512 and Wage Order 1-2001 §11)
2. Failure to Provide Third Rest Periods or Compensation in Lieu Thereof (Labor Code § 226.7 and Wage Order 1-2001 §12))
3. Failure to Provide Accurate Itemized Wage Statements (Labor Code §§226, 1174)
4. Failure to Timely Pay Wages to Terminated Employees (Labor Code §§201- 203)
5. Violation of Unfair Competition Law (Business & Professions Code §17200, et seq.)
6. Statutory Penalties (Labor Code §§558, 2699, subd. (f))

DEMAND FOR JURY TRIAL

1 Plaintiff JAVIER PASILLAS ("Plaintiff"), individually and on behalf of himself and
2 others similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant AGILITY FUEL SYSTEMS,
5 INC. and DOES 1 through 100 ("Defendants" or "AGILITY FUEL") to recover compensation for
6 failing to provide statutory second meal periods and third rest periods by failing to relieve its
7 employees of all duty, relinquish control over their activities and permit a reasonable opportunity
8 to take an uninterrupted 30-minute second meal break or a third ten-minute rest period. Plaintiff
9 also seeks penalties for Defendants' failure to pay all wages due to all terminated or resigned
10 employees and failure to properly itemize wage statements.

11 **JURISDICTION AND VENUE**

12 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
13 Civil Procedure, section 395. Defendant AGILITY FUEL is a Delaware corporation with its
14 headquarters in Santa Ana, California. Defendants employ warehouse employees and conduct
15 business in Orange County, and each Defendant is within the jurisdiction of this Court for service
16 of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those
17 similarly situated within the State of California and within Orange County. Defendants employ
18 numerous Class Members in Orange County. There is no federal question at issue, nor is there
19 diversity of citizenship, as the issues herein are based solely on California statutes and law,
20 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil Code, and Business
21 and Professions Code.

22 3. Plaintiff's individual damages are less than \$75,000.

23 4. The monetary damages and restitution sought by Plaintiff exceed the minimal
24 jurisdictional limits of the Superior Court and will be established according to proof at trial.
25 Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy,
26 including claims for monetary damages, restitution and attorney's fees is more than twenty-five
27 thousand dollars (\$25,000), and that the aggregate amount in controversy for the proposed class
28 action, including monetary damages, restitution, injunctive relief and attorney's fees is less than

1 five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff reserves the right to seek
2 a larger amount based upon new and different information resulting from investigation and
3 discovery.

4 5. Further, Business and Professions Code, section 17203 provides that any person
5 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
6 Business and Professions Code, section 17204 provides that any person acting on his or her own
7 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
8 maintains appropriate jurisdiction to hear this matter.

9 **PARTIES**

10 6. Plaintiff JAVIER PASILLAS is a resident of the State of California. Plaintiff
11 JAVIER PASILLAS worked for Defendants for approximately three years as a non-exempt lead
12 in the shipping and receiving department, and his employment terminated in approximately
13 November 2013. Plaintiff worked at the Fontana warehouse along with other shipping and
14 receiving employees, production employees, welders, installers and drivers. Agility Fuel Systems,
15 Inc. operates at least three warehouses in California: Fontana, Mira Loma, and another in Santa
16 Ana. Plaintiff regularly worked shifts lasting between ten and twelve hours. Other employees
17 regularly worked shifts greater than ten hours as well. Plaintiff was not informed of his ability nor
18 was he permitted to take a second off-duty 30-minute meal period after working a shift of more
19 than ten hours. Plaintiff asked to take second meal periods, but he was not provided with the
20 opportunity to take second meal periods when working shifts over ten hours, and he was written
21 up for asking for his second meal periods. Plaintiff also was not informed that he was entitled to a
22 third rest period for every four hours or major fraction thereof worked when working shifts greater
23 than ten hours, nor was he able to take third rest periods. Defendants failed to timely pay wages
24 upon termination and failed to provide accurate, itemized wage statements.

25 7. Defendant AGILITY FUEL is a Delaware corporation and operates within
26 California. AGILITY FUEL's headquarters is in Santa Ana, California, and it employs numerous
27 Class Members in Orange County. At each of its California locations, AGILITY FUEL employs
28 warehouse employees, including but not limited to the following: shipping and receiving

1 employees, production employees, welders, installers and drivers. As a matter of company policy
2 and practice, Defendant AGILITY FUEL fails to authorize and permit statutory second meal
3 periods and third rest periods by failing to relieve its employees of all duty, relinquish control over
4 their activities and permit a reasonable opportunity to take an uninterrupted 30-minute second
5 meal break or a third ten-minute rest period when employees work more than 10 hours. Moreover,
6 AGILITY FUEL failed to provide appropriate compensation in lieu of authorizing and permitting
7 second meal periods and third rest periods when employees worked more than ten hours, failed to
8 provide accurate wage statements, and failed to timely pay all wages owed to terminated or
9 resigned employees.

10 8. Plaintiff is unaware of the true names, capacities, relationships, and extent of
11 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 100, but is
12 informed and believes and thereon alleges that said Defendants are legally responsible for the
13 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
14 Plaintiff will amend this complaint when their true names and capabilities are ascertained.

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

21 GENERAL ALLEGATIONS

22 10. During all, or a portion, of the Class Period, Plaintiff and each member of the
23 Plaintiff Class were employed by Defendants and each of them, in the State of California.

24 11. Plaintiff and each Plaintiff Class member were non-exempt employees covered
25 under one or more Industrial Welfare Commission (IWC) Wage Orders, including 1-2001 ("Wage
26 Orders").

27 12. During the class period, the Defendants, and each of them, required Plaintiff and
28 Plaintiff class members to work without authorizing and permitting statutory second meal periods

1 when employees worked shifts greater than ten hours and failed to pay putative class members an
2 hour's pay in lieu thereof.

3 13. During the class period, the Defendants, and each of them, required Plaintiff and
4 Plaintiff class members to work without authorizing and permitting statutory third rest periods
5 when employees worked shifts greater than ten hours and failed to pay putative class members an
6 hour's pay in lieu thereof.

7 14. During the class period, the Defendants, and each of them, failed to provide
8 accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class.

9 15. During the class period, the Defendants, and each of them, failed to pay all wages
10 owed to terminated members of the Plaintiff Class.

11 16. Business and Professions Code, section 17203 provides that any person who
12 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
13 and Professions Code, section 17204 provides that any person who has suffered actual injury and
14 has lost money or property as a result of the unfair competition may bring an action in a court of
15 competent jurisdiction.

16 **CLASS ACTION ALLEGATIONS**

17 17. Plaintiff brings this action on behalf of himself and all others similarly situated as a
18 class action pursuant to Code of Civil Procedure, section 382. The members of the Class are
19 defined as follows:

20 All individuals employed by Defendants in California as hourly warehouse
21 employees within four years of the filing of the Complaint.

22 18. Further, Plaintiff brings this action on behalf of himself and all other similarly
23 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
24 follows:

25 All members of the Plaintiff class who were subject to a company practice of
26 failing to pay meal period premium pay when not relieving employees of all duty,
27 relinquishing control over their activities and permitting a reasonable opportunity to
28 take an uninterrupted 30-minute second meal break. ("Second Meal Period Sub-
Class")

1 19. Further, Plaintiff brings this action on behalf of himself and all other similarly
2 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
3 follows:

4 All members of the Plaintiff class who were subject to a company practice of
5 failing to pay rest period premium pay when not relieving employees of all duty,
6 relinquishing control over their activities and permitting a reasonable opportunity to
take an uninterrupted 10-minute third rest break. (“Third Rest Period Sub-Class”)

7 20. Further, Plaintiff brings this action on behalf of himself and all other similarly
8 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
9 follows:

10 All members of the Plaintiff class who, within one year of the filing of the
11 Complaint, were subject to a company practice of failing to accurately itemize
wage statements. (“Itemized Wage Statement Sub-Class”)

12 21. Further, Plaintiff brings this action on behalf of himself and all other similarly
13 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
14 follows:

15 All Plaintiff Class Members employed by Defendants in California within three
16 years of the filing of the Complaint, who were subject to a company practice of
17 failing to timely pay all wages owed upon separation from employment. (“Waiting
Time Penalty Sub-Class”)

18 22. Further, Plaintiff brings this action on behalf of himself and all other similarly
19 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
20 follows:

21 Plaintiff Class Members subject to Defendants’ policies and/or practices of failing
22 to provide statutory second meal periods and third rest periods by failing to relieve
23 employees of all duty, relinquish control over their activities and permit a
24 reasonable opportunity to take an uninterrupted 30-minute second meal break and
10 minute third rest break when working shifts greater than ten hours and thereby
owed restitution. (“Unfair Competition Law Sub-Class”)

25 23. Further, Plaintiff brings this action on behalf of himself and all other similarly
26 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
27 follows:

28 Plaintiff Subclass: All California Class members bringing claims who, as a
result of being subject to Defendants’ policies and practices violating

1 various Labor Code provisions, are entitled to penalties under the
2 California Private Attorneys General Act. (“PAGA Sub-Class”)

3 24. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
4 applicable law to amend or modify the class definition with respect to issues or in any other ways.
5 Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-
6 wide recovery based on the allegations set forth in this complaint.

7 25. This action has been brought and may be maintained as a class action pursuant to
8 Code of Civil Procedure, section 382 because there is a well-defined community of interest in the
9 litigation and the proposed Class is easily ascertainable through the records Defendants are
10 required to keep.

11 26. Numerosity. The members of the Class are so numerous that individual joinder of
12 all of them as Plaintiff is impracticable. While the exact number of the Class members is unknown
13 to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there are more
14 than 100 Class members.

15 27. Commonality. Common questions of law and fact exist as to all Class members and
16 predominate over any questions that affect only individual members of the Class. These common
17 questions include, but are not limited to:

- 18 a. Did Defendants violate Labor Code sections 226.7 and 512 by failing to
19 maintain a policy and practice to authorize and permit warehouse
20 employees to take second meal periods and third rest periods when working
21 shifts of ten hours or more?
- 22 b. Did Defendants violate Labor Code sections 226.7, 512 and Wage Order 1-
23 2001(11) by not providing the Class Members meal periods for shifts
24 greater than ten (10) hours by failing to relieve employees of all duty,
25 relinquish control over their activities and permit a reasonable opportunity
26 to take an uninterrupted 30-minute second meal break or a 10-minute third
27 rest break and not paying them an additional hour’s of pay in lieu thereof?
- 28 c. Did Defendants violate Labor Code section 226 by knowingly and

- 1 intentionally failing to provide accurate itemized wage statements?
- 2 d. Did Defendants violate Labor Code sections 201 and/or 202 by not paying
- 3 Class Members who are no longer employed by Defendants all earned
- 4 wages, including wages due under Labor Code section 226.7 and 512, upon
- 5 their termination of employment? If so, were such violations “willful”
- 6 within the meaning of Labor Code section 203?
- 7 e. Did Defendants violate the Unfair Competition Law, Business &
- 8 Professions Code, section 17200, et seq., by engaging in the conduct alleged
- 9 in this complaint?
- 10 f. What are the effects and the extent of any injuries sustained by the Plaintiff
- 11 Class and Plaintiff Sub-Class members and appropriate type and/or measure
- 12 of damages?
- 13 g. What is the amount of restitution owed by the Defendants attributable to
- 14 their violation of the Unfair Competition Law by failure to pay premium
- 15 payments for failure to provide second meal periods and third rest periods?
- 16 h. What is the appropriateness and nature of relief to each Plaintiff Class and
- 17 Sub-Class member?
- 18 i. What is the extent of liability of each Defendant, including DOE
- 19 defendants, to each Plaintiff Class and Sub-Class member?

20 28. Typicality. Plaintiff’s claims are typical of the claims of the other members of the

21 Class. Plaintiff and other members of the Class were subject to the same policy and practice of

22 failing to provide Plaintiff and members of the Plaintiff Class with statutory second meal periods

23 and third rest breaks for shifts greater than ten (10) hours by failing to relieve employees of all

24 duty, relinquish control over their activities and permit a reasonable opportunity to take an

25 uninterrupted 30-minute meal break and 10-minute rest break. Defendants failed to provide

26 accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class. Finally,

27 Defendants failed to pay all wages owed to Plaintiff and Plaintiff Class members upon termination

28 of employment.

1 second meal period may be waived by mutual consent of the
2 employer and the employee only if the first meal period was not
waived.

3 34. Labor Code section 226.7 provides as follows:

4 (a) No employer shall require any employee to work during any
5 meal or rest period mandated by an applicable order of the Industrial
Welfare Commission.

6 (b) If an employer fails to provide an employee a meal period or rest
7 period in accordance with an applicable order of the Industrial
Welfare Commission, the employer shall pay the employee one
8 additional hour of pay at the employee's regular rate of
9 compensation for each work day that the meal period or rest period
is not provided.

10 35. Wage Order 1-2001, section 11(B) provides, in pertinent part,

11 An employer may not employ an employee for a work period of
12 more than ten (10) hours per day without providing the employee
13 with a second meal period of not less than 30 minutes, except that if
14 the total hours worked is no more than 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.

15 36. Defendants failed to provide the Class members with second meal periods as
16 provided in Labor Code sections 226.7 and 512 by failing to relieve employees of all duty,
17 relinquish control over their activities and permit a reasonable opportunity to take an uninterrupted
18 30-minute second meal break, and failed to pay them the additional pay at the employee's regular
19 rate of compensation for each work day in lieu of providing the off-duty second meal period.

20 37. As a result of Defendants' failure to comply with their obligations under Labor
21 Code sections 512 and 226.7 and Wage Order 1-2001, Plaintiff and the other members of the
22 Class have suffered damages in an amount, subject to proof, to the extent they were not paid
23 additional pay owed for Defendants' failure to provide meal periods as required by the law.
24 Pursuant to Labor Code section 218, Plaintiff and other members of the Class are entitled to
25 recover the full amount of their unpaid additional pay for Defendants' failure to provide second
26 meal periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and other
27 members of the Class are entitled to recover prejudgment interest on the amount of the additional
28 pay owed.

1 the Class are entitled to recover prejudgment interest on the amount of the additional pay owed.

2 45. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
3 described below.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

6 **(Plaintiff and Plaintiff Class against each Defendant)**

7 46. Plaintiff incorporates the preceding paragraphs.

8 47. Labor Code section 226 subdivision (a) requires Defendants to itemize and
9 accurately report all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by Plaintiff and members of the Plaintiff Class in
11 wage statements. Defendants have knowingly and intentionally failed to comply with Labor Code
12 section 226, subdivision (a) on each and every wage statement that should have been provided to
13 Plaintiff and members of the Plaintiff Class.

14 48. Labor Code section 1174 requires Defendants to maintain and preserve, in a
15 centralized location, among other items, records showing the names and addresses of all
16 employees employed, payroll records showing the hours worked daily by and the wages paid to
17 their employees. Defendants have knowingly and intentionally failed to comply with Labor Code
18 section 1174. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to
19 Labor Code section 1175.

20 49. Wage Order 1-2001(7) requires Defendants to maintain time records showing,
21 including but not limited to, when the employee begins and ends each work period, meal periods,
22 split shift intervals and total daily hours worked in itemized wage statements, and must show all
23 deductions from payment of wages, and accurately report total hours worked by Plaintiff and
24 members of the Plaintiff Class.

25 50. WHEREFORE, Plaintiff and the Plaintiff Class he seeks to represent request relief
26 as described below.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES OWED AT TERMINATION**

3 **(Plaintiff and Plaintiff Class against each Defendant)**

4 51. Plaintiff incorporates the preceding paragraphs.

5 52. Labor Code sections 201 and 202 require Defendants to pay employees all wages
6 due within 72 hours of termination of employment. Labor Code section 203 provides that if an
7 employer willfully fails to timely pay such wages, then the employer must, as a penalty, continue
8 to pay the subject employees' wages until the back wages are paid in full or an action is
9 commenced. The penalty cannot exceed 30 days of wages.

10 53. As alleged above, Plaintiff and the Class he seeks to represent are entitled to
11 compensation for failing to provide statutory second meal periods and third rest periods by failing
12 to relieve employees of all duty, relinquish control over their activities and permit a reasonable
13 opportunity to take an uninterrupted 30-minute second meal break and 10-minute third rest break.

14 54. More than 30 days have passed since Plaintiff and certain members of the Plaintiff
15 Class have left Defendants' employ.

16 55. As a consequence of Defendants' willful conduct in not paying wages owed,
17 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
18 Code section 203 for failure to pay legal wages, together with interest thereon and attorneys' fees
19 and costs.

20 56. WHEREFORE, Plaintiff and the members of the Plaintiff Class request relief as
21 described below.

22 **FIFTH CAUSE OF ACTION**

23 **VIOLATION OF BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

24 **(Plaintiff and Plaintiff Class against each Defendant)**

25 57. Plaintiff incorporates the preceding paragraphs.

26 58. The unlawful conduct of Defendants alleged herein constitutes unfair competition
27 within the meaning of Business & Professions Code, section 17200, et seq. Due to their unlawful
28 and unfair business practices in violation of the Labor Code, Defendants have gained a

1 competitive advantage over other comparable companies doing business in the State of California
2 that comply with their obligations to properly pay employees for all earned wages as required by
3 law.

4 59. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
5 members of the Class have suffered injury in fact and lost money or property. Plaintiff and other
6 members of the Class have been deprived of their rights to wages due as alleged herein.

7 60. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
8 members of the Class are entitled to restitution of all wages and other moneys owed and belonging
9 to them, including interest thereon that Defendants wrongfully withheld from them and retained
10 for themselves by means of their unlawful and unfair business practices.

11 61. Plaintiff and other members of the Class are entitled to recover reasonable
12 attorneys' fees pursuant to Code of Civil Procedure, section 1021.5, the substantial benefit
13 doctrine, and/or the common fund doctrine.

14 **SIXTH CAUSE OF ACTION**

15 **STATUTORY PENALTIES**

16 **(Plaintiff and Plaintiff Class against each Defendant)**

17 62. Plaintiff incorporates the preceding paragraphs.

18 63. The failure to pay all wages owed due to failure to provide second meal periods and
19 third rest periods, failure to provide accurate wage statements, failure to pay all wages owed to
20 terminated or resigned employees, and the knowing and intentional failure to provide accurate and
21 itemized wage statements subjects Defendant to civil penalties pursuant to California Labor Code
22 sections 558 and 2699 subdivision (f).

23 64. Labor Code section 558 provides a penalty against any employer or other person
24 acting on behalf of the employer who violates or causes to be violated any provision regulating
25 hours and days of work contained in Labor Code general working hours chapter (Sections 500-
26 558), and Industrial Welfare Commission Wage Orders. Plaintiff alleges that Defendants' practices
27 and policies to deny Plaintiff and Plaintiff Class members premium payments, violate both the
28 labor code and several provisions regulating the hours and days of work in the Wage Order 1-

1 2002. Accordingly, Plaintiff and members of the Class are entitled to statutory penalties under
2 Labor Code section 558.

3 65. As a result of the violations alleged herein, Plaintiff, as an aggrieved employee on
4 behalf of himself and other current and former hourly, warehouse employees of Defendants, seeks
5 all civil penalties available pursuant to Labor Code sections 558 and 2699, et seq. Therefore,
6 pursuant to Labor Code sections 558 and 2699, et seq., Plaintiff, as an aggrieved employee on
7 behalf of himself and other hourly, warehouse employees is entitled to collect all civil penalties
8 owed, attorneys' fees, expenses, and costs of suit.

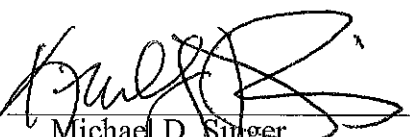
9 66. Labor Code section 2699.5 identifies, inter alia, Labor Code sections 201-203, 226,
10 226.7, 512, as statutes to which Sections 2699.3's procedural requirements must be met before a
11 penalty may be assessed under Section 2699 subdivision (f). Plaintiff has complied with the
12 procedural requirements specified in Labor code section 2699.3 by providing written notice by
13 certified mail to the Labor and Workforce Development Agency (LWDA). See Exhibit 1 attached
14 hereto, which is a true and correct copy of the Notice correspondence showing compliance with
15 Labor Code section 2699.3. No notice of intent to investigate the alleged violation was provided
16 within 33 calendar days of the postmark date of Plaintiff's notice to the LWDA. As a
17 consequence, Plaintiff has exhausted administrative remedies, and on behalf of himself and all
18 other aggrieved current and former employees of Defendants. Plaintiff, therefore, pursues this
19 cause of action as permitted by Labor Code sections 2699, et seq.

20 67. Enforcement of statutory provisions enacted to protect workers and to ensure
21 proper and prompt payment of wages due to employees is a fundamental public interest in
22 California. Consequently, Plaintiff's success in this action will result in the enforcement of
23 important rights as affecting the public interest and will confer a significant benefit upon the
24 general public. Private enforcement of the rights enumerated herein is necessary, as no public
25 agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action
26 and it would be against the interests of justice to require the payment of attorneys' fees and costs
27 from any recovery that might be obtained herein, pursuant to, inter alia, Labor Code sections
28 218.5, 226 and 2699, Wage Order 1-2002, and Code of Civil Procedure section 1021.5.

- 1 B. For appointment of Plaintiff as the representative of the Class;
- 2 C. For appointment of counsel for Plaintiff as Class Counsel;
- 3 D. For unpaid wages pursuant to Labor Code section 226.7;
- 4 E. For remedies under Labor Code section 203;
- 5 F. For remedies under Labor Code section 226(e) and (g);
- 6 G. For penalties for failure to timely pay wages to terminated or resigned employees;
- 7 H. For prejudgment interest;
- 8 I. For penalties pursuant to Labor Code section 558;
- 9 J. For penalties pursuant to Labor Code section 2699, subd. (f);
- 10 K. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
- 11 1021.5, pursuant to the common fund, substantial benefit, and private attorney
- 12 general theories; and
- 13 L. For such other relief the Court deems just and proper.

14 Dated: January 24, 2014

COHELAN KHOURY & SINGER

15
16 By: 
17 Michael D. Singer
Kimberly D. Neilson


18 Attorneys for Plaintiff JAVIER PASILLAS,
19 individually and on behalf of others similarly
situated

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands jury trial for all claims so triable.

22
23 Dated: January __, 2014

COHELAN KHOURY & SINGER

24
25 By: 
26 Michael D. Singer
Kimberly D. Neilson

27 Attorneys for Plaintiff JAVIER PASILLAS,
28 individually and on behalf of others similarly
situated

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

([†] Also admitted in Illinois)
(^Δ Of Counsel)

www.ckslaw.com

December 19, 2013

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

To: California Labor and Workforce Development Agency and Agility Fuel Systems, Inc.

From: Javier Pasillas on behalf of himself and all current and former non-exempt California warehouse employees of Agility Fuel Systems, Inc.

Factual Statement

Agility Fuel Systems manufactures and ships waste units for natural gas companies in its distribution centers. Javier Pasillas is a former employee of Agility Fuel Systems, Inc. who worked as a non-exempt lead shipper/receiver. Pasillas gives notice of his intent to bring a cause of action for violation of the Private Attorneys General Act of 2004 ("PAGA") for failure by Agility Fuel Systems, Inc. to comply with California's wage and hour requirements.

Mr. Pasillas worked for the company for approximately three years as a non-exempt lead in the shipping and receiving department, and his employment terminated in approximately November 2013. Mr. Pasillas worked at the Fontana warehouse along with other shipping and receiving employees, production employees, welders, installers and drivers. Agility Fuel Systems, Inc. operates at least three warehouses in California: Fontana, Mira Loma, and another in Santa Ana. Mr. Pasillas regularly worked shifts lasting between ten and twelve hours. Other employees regularly worked shifts greater than ten hours as well.

Mr. Pasillas was not informed of his ability nor was he permitted to take a second off-duty 30-minute meal period after working a shift of ten hours or more. Mr. Pasillas asked to take second meal periods. He was not provided with the opportunity to take second meal periods when working shifts over ten hours, and he was written up for asking for his second meal periods. Mr. Pasillas also was not informed that he was entitled to a third rest period for every four hours or major fraction thereof worked when working shifts greater than ten hours, nor was he able to take third rest periods. Mr. Pasillas does not believe that he was ever paid a premium payment of one hour of pay at the regular rate of pay for Agility Fuel System's failure to provide a second meal period or third rest period.

Mr. Pasillas was not offered and did not waive his second meal periods or third rest periods when working shifts longer than ten hours. As such, he was owed wages for each pay period during which he was not provided with a second meal period or a third rest period when working shifts greater

than ten hours. Thus, his wage statements were not properly itemized with all wages owed him, and at his termination of employment, he was not timely paid all wages owed him.

Theories of Labor Code Violations and Remedies

Claimant Javier Pasillas and others employed by Agility Fuel Systems, Inc. in its California warehouses are entitled to (1) second meal periods when working more than ten hours per day or compensation in lieu thereof under IWC Wage Order 1-2001, section 10, Labor Code sections 226.7 and 512; (2) rest periods for every four hours or major fraction thereof worked or compensation in lieu thereof under IWC Wage Order 1-2001, section 11, Labor Code section 226.7; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1029 (Employees are entitled to three rest periods when working shifts greater than ten hours); (3) payment of all wages due at termination pursuant to Labor Code sections 201-203; and (4) correctly itemized and accurate wage statements under Labor Code section 226, as well as all available penalties as set forth in Labor Code Section 2699(f).

Agility Fuel Systems, Inc. failed to authorize or permit second meal periods for Claimant and all other similarly situated warehouse employees as required by Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders 1-2001(10). Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code Section 558 and applicable IWC Wage Orders. Claimants seek wages of one additional hour of pay as permitted by Labor Code Section 226.7(b) as well as all available penalties as set forth in Labor Code Section 2699(f).

Because Agility Fuel Systems, Inc. did not fully compensate Claimant and other similarly situated employees for failure to provide second meal periods and third rest periods during shifts greater than ten hours, it also failed to properly itemize the employees' wage statements and did not timely pay all wages due at separation for those whose employment has terminated.

These aggrieved employees were also entitled to third rest breaks. Agility Fuel Systems, Inc. failed to authorize or permit rest breaks for claimant and all other similarly situated warehouse employees as required by Labor Code sections 226.7 and 512, and IWC Wage Orders. Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and applicable IWC Wage Orders. Furthermore, since Agility Fuel Systems, Inc. required its warehouse employees to work during rest periods in violation of Labor Code section 226.7(a), Claimants seek wages of one additional hour of pay as permitted by Labor Code section 226.7(b) as well as all available penalties as set forth in Labor Code Section 2699(f).

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorney's fees as permitted by Labor Code sections 218.5, 1194, and other penalties, as permitted.

Plaintiff will file a proposed class action lawsuit and if after 33 days has elapsed, the LWDA does not take action or declines to intervene, Pasillas will amend the Complaint to add a cause of action for violations of PAGA and proceed as a representative action, as permitted by law.

CA Labor & Workforce Development Agency

Page 3

December 19, 2013

Thank you for your attention to this matter.

Very truly yours,
COHELAN KHOURY & SINGER



Kimberly D. Nelson

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Marty Morgenstern, Secretary
California Labor and Workforce Development Agency
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, CA 95814

Agility Fuel Systems, Inc.
5409 Maryland Way, Suite 215
Brentwood, TN 37027

Agility Fuel Systems, Inc.
c/o CT Corporation System, Agent for Service of Process
818 W. Seventh Street
Los Angeles, CA 90017

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ 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, or on the front if space permits. 	A. Signature 800 Capitol Mall Sacramento, CA 95833 <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to: Marty Morgenstern, Secretary California Labor and Workforce Development Agency 800 Capitol Mall, Suite 5000 M1C-55 Sacramento, CA 95814	B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.	
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
7012 3460 0001 4555 0128		

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 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, or on the front if space permits.

1. Article Addressed to:

Agility Fuel Systems, Inc.
5409 Maryland Way, Suite 215
Brentwood, TN 37027

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Scott Longear* Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery
12/27

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

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. Article Number

(Transfer from service label)

7012 3460 0001 4555 0142

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 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, or on the front if space permits. 	<p>A. Signature: <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): CT CORPORATION SYSTEM 818 West Seventh Street 2nd floor</p> <p>C. Date of Delivery: 12/24/13</p>
<p>1. Article Addressed to:</p> <p>Agility Fuel Systems, Inc. c/o CT Corporation System Agent of Service of Process 818 W. Seventh Street Los Angeles, CA 90017</p>	<p>D. Is any address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label) 7012 3460 0001 4555 0135</p>	
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	