

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

J. Jason Hill (SBN 179630)

jhill@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

LEBE LAW, APC

Jonathan M. Lebe (SBN 284605)

jon@lebelaw.com

777 S. Alameda Street, Second Floor

Los Angeles, CA 90021

Telephone: (213) 358-7046

Attorneys for Plaintiff DEION WALKER, on behalf of himself and all other
 Similar "Aggrieved Employees," as a Representative of the California Labor and Workforce
 Development Agency ("LWDA")

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

DEION WALKER, on behalf of himself and
 all other Similar "Aggrieved Employees," as
 a Representative of the California Labor and
 Workforce Development Agency
 ("LWDA"),

Plaintiff,

v.

UNITED PARCEL SERVICE, INC., an
 Ohio corporation; and DOES 1 through 25,
 inclusive,

Defendants.

Case No. 20STCV16019

**REPRESENTATIVE ACTION FOR
 RECOVERY OF CIVIL PENALTIES
 PURSUANT TO THE CALIFORNIA
 PRIVATE ATTORNEYS GENERAL ACT
 ("PAGA")**

1. PAGA Civil Penalties for Failure to Pay Reporting Time Wages (Labor Code §§ 218 and 2699(f)(2); IWC Wage Order 9-2001, § 5);
2. PAGA Civil Penalties for Failure to Pay Minimum/Regular Wages (Labor Code §§ 1194, 1194.2, 1197, 1197.1, and 2699(f)(2));
3. PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements (Labor Code §§ 226.3, 1198-1199, and 2699(f)(2); IWC Wage Order 9-2001, § 7);
4. PAGA Civil Penalties for Failure to Timely Pay All Wages Due Upon Separation of Employment (Labor Code §§ 210, 256, and 2699(f)(2)); and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. PAGA Civil Penalties for Failure to Maintain Accurate Records (Labor Code §§ 558, 558.1, 1198(c), 1197.1, and 2699(f)(2))
6. PAGA Civil Penalties for Failure to Provide Suitable Breaking Locations to Address Inclement or Extreme Weather Conditions in Violation of IWC Wage Order 9-2001, § 15.

1 Plaintiff DEION WALKER (“Plaintiff”), on behalf of himself and as a Representative
2 for the California Labor and Workforce Development Agency (“LWDA”) under the California
3 Private Attorneys General Act (“PAGA”) and on behalf of other similar “aggrieved employees”
4 in the State of California, alleges against Defendant UNITED PARCEL SERVICE, INC., an
5 Ohio corporation, and Does 1 through 25, inclusive (“Defendants” or “UPS”) the following upon
6 his own personal knowledge, or where there is no personal knowledge, upon information, belief,
7 and the investigation of counsel, as follows:

8 **INTRODUCTION**

9 1. Plaintiff brings this action as Representative Action to recover civil penalties on
10 behalf of himself and other similar “aggrieved employees” who worked during the PAGA Period
11 (from February 19, 2019 to present) as current and former hourly non-exempt package loaders
12 and unloaders employed by Defendant UNITED PARCEL SERVICE, INC., an Ohio
13 corporation, and Does 1 through 25, inclusive (“Defendants” or “UPS”).

14 2. Plaintiff has fully complied with the PAGA Notice requirements under Labor
15 Code section 2699.3, and has exhausted all PAGA administrative remedies are required by law.
16 Plaintiff provided formal notice to the LWDA and UPS on February 19, 2020. The LWDA did
17 not investigate or intervene and UPS did not cure any of the issues raised in the PAGA Notice.
18 A true and correct copy of the PAGA Notice provided to the LWDA and UPS is attached hereto
19 as **Exhibit 1**, and is expressly incorporated herein by this reference.

20 3. Plaintiff brings this action to recover civil penalties based on unpaid
21 compensation, including failure to pay reporting time wages for canceled or short shifts after
22 employees clocked in to work; civil penalties per pay period for Defendants’ failure to pay
23 minimum wages for time spent under employer control for obligatory security screenings; civil
24 penalties for each pay period in the PAGA Period for Defendants’ failure to provide accurate
25 itemized wage statements showing reporting time wages and all minimum wages owed for
26 mandatory security screening time; civil penalties for each pay period during the PAGA Period
27 for Defendants’ failure to pay all wages due during and upon termination of employment; civil
28 penalties for failure to comply with IWC Wage Order 9-2001, section 15 to provide suitable

1 areas to deal with extreme or inclement weather; and for attorneys' fees and costs as permitted
2 by California Labor Code section 2699(g).

3 **JURISDICTION AND VENUE**

4 4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
5 Civil Procedure section 395. Defendants conduct business in Los Angeles County, California
6 and each Defendant is within the jurisdiction of this Court for service of process purposes. The
7 unlawful acts alleged have a direct effect on Plaintiff and other aggrieved employees within the
8 State of California and Los Angeles County. Defendants employ numerous aggrieved employees
9 in Los Angeles County. There is no federal question at issue, as the issues are based solely on
10 California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
11 Procedure, Civil Code, and Business and Professions Code.

12 5. Based on information and belief, Plaintiff alleges that this entire action arises
13 solely under California statutes and law, including the Labor Code, IWC Wage Orders, Code of
14 Civil Procedure, Civil Code, and Business and Professions Code. Plaintiff further alleges, upon
15 information and belief, that no federal question is raised and that the federal Class Action
16 Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that
17 exceptions for local case or controversy under the CAFA do apply—both of which prohibit
18 removal of this action to federal court.

19 6. Plaintiff is informed and believes that the amount of his individual claims in
20 controversy are less than \$75,000 necessary to invoke diversity jurisdiction.

21 7. Further as a representative action under the PAGA, the matter is not subject to
22 removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to
23 federal jurisdiction.

24 **THE PARTIES**

25 **A. Plaintiff**

26 8. Plaintiff DEION WALKER is a resident of the State of California who was
27 formerly employed by Defendants in Los Angeles County as a non-exempt, hourly parcel and
28 package loader/unloader. He was employed from November 11, 2019 until January 10, 2020.

1 Plaintiff WALKER worked at UPS hubs and terminals in Los Angeles, California. WALKER
2 was paid approximately \$14.25 per hour.

3 9. Plaintiff and the proposed group of similar “aggrieved employees” were loaders
4 and unloaders of packages and considered transportation workers as defined under appropriate
5 law, and were charged with the duty to load and unload parcel delivery trucks for UPS. Plaintiff,
6 at all times, was regularly scheduled for work 5 days per week, but upon arrival, was subject to
7 unpaid mandatory security screening time both in and out of the facility, and as many as 2 or
8 more times per week, he was dismissed from work by his employers without payment of
9 reporting time wages as is required by IWC Wage Order 9-2001, section 5. As many as 2-3 times
10 per week, *after clocking in to Defendants’ timekeeping system*, Plaintiff was told to clock out
11 without receiving reporting time pay as required by applicable California law and regulation.
12 This claim can be shown by review of corporate timekeeping and payroll records that are
13 required to be maintained under California law and Section 7 of the applicable Wage Order.

14 **B. Defendants**

15 10. Defendant UNITED PARCEL SERVICE, INC. is an Ohio Corporation (Entity
16 No. C0407243), with its principal place of business located at 55 Glenlake Parkway NE, Atlanta,
17 Georgia 30328. Defendant operates and conducts business throughout California and engages in
18 international package and parcel delivery services and logistics.

19 11. The true names and capabilities, whether individual, corporate, associate, or
20 otherwise, of the Doe Defendants 1 through 25 (“Doe Defendants”), are currently unknown to
21 Plaintiff, and Plaintiff therefore sues these Doe Defendants by such fictitious names pursuant to
22 California Code of Civil Procedure section 474. Plaintiff will seek leave to amend this Complaint
23 to show their true names and capacities when the same has been ascertained.

24 12. Plaintiff is informed and believes, and based thereon alleges, that each of the
25 Defendants (including the Doe Defendants) were, or are, in some way or manner, responsible
26 and liable to Plaintiff and other similar “aggrieved employees” for the events, happenings, and
27 circumstances hereinafter set forth in the body of this Complaint, and directly and proximately
28 caused Plaintiff and other “aggrieved employees” (defined below) to be subject to the unlawful

1 employment and business practices, wrongs, injuries, and damages complained of herein.
2 Plaintiff is informed and believes, and based thereon alleges, that said Defendants may be further
3 responsible for the damages and injuries suffered by Plaintiff and other aggrieved employees on
4 alternative theories of liability not specifically addressed herein.

5 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 (including the Doe Defendants), and each of them, were, and are, an owner, co-owner, agent,
7 representative, partner, and/or alter ego of its co-defendants, or otherwise acted, and continue to
8 act, on behalf of each and every remaining Defendant and, in doing the things hereinafter alleged,
9 were, at all times material hereto, acting within the course and scope of their authorities as an
10 owner, co-owner, agent, representative, partner, and/or alter ego of its co-Defendants, with the
11 full knowledge, permission, consent, and authorization of each and every remaining Defendant,
12 each co-Defendant having ratified or promoted the acts of the other co-Defendants, such that
13 each of them are jointly and severally liable to Plaintiff and other aggrieved employees. Plaintiff
14 is further informed and believes, and based thereon alleges, that at all material times alleged
15 herein, Defendants, and each of them, were members of, and engaged in, a joint enterprise,
16 partnership, and/or common enterprise, and acting within the course and scope of, and in
17 pursuance of, said joint venture, partnership, and/or common enterprise.

18 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
19 (including the Doe Defendants), directly or indirectly, or through agents or other persons,
20 employed Plaintiff and other aggrieved employees, and exercised control over their wages,
21 hours, and working conditions. Plaintiff is further informed and believes, and based thereon
22 alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other
23 Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto,
24 and the acts of each Defendant is legally attributable to the other Defendants. The Defendants,
25 and each of them, jointly managed, operated, and controlled all aspects of the manner and means
26 of employee work and were a joint employer of Plaintiff and other aggrieved employees under
27 California law, and liable for illicit wage and hour practices alleged herein.

28 15. Plaintiff is presently unable to specifically identify all individuals who may have

proximately caused or materially contributed to the alleged Labor Code and Wage Order violations, but reserves the right to name said individuals once their identities are discovered. California Labor Code section 558.1 provides: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Pursuant to California law, failure to pay wages to employees vitiates any corporate veil protections as to any officer, director, and/or managing director who engaged in actions to violate the Labor Code or applicable IWC Wage Orders. See, *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 238 Cal. Rptr. 3d 465. Specifically, the court held that “if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer.” *Id.* at *820. See also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same).

GENERAL ALLEGATIONS

16. Plaintiff re-incorporates each of the foregoing paragraphs herein as if set forth in full.

17. During all or substantial portion of the proposed “PAGA Period,” defined as 1 year and 65 days prior to the commencement of this action until the date of commencement of trial (or such earlier date determined by the Court), Defendants employed hourly-paid, non-exempt parcel package loaders and unloaders in the State of California to facilitate Defendants’ interstate transportation for delivery of products in commerce.

18. During all or a substantial portion of the proposed PAGA Period, Defendants maintained a uniform and systematic payroll policy wherein UPS scheduled employees to work, allowed them to arrive at work, but then dismissed the employees from work shifts without paying reporting time wages as required by IWC Wage Order 9-2001 (as amended), section 5, which is a wage and hour minimum working condition under California law in order to prevent

1 abuse by employers who require employees to show up for scheduled shifts but then have less
2 work than anticipated. The purpose of the pay is to attempt to ameliorate the lost time and value
3 of the employees' work, who may have foregone other work opportunities only to find out they
4 are being dismissed from work by their employer without being paid for expected shift time or
5 reporting time wages as required by IWC Wage Order, 9-2001, section 5.

6 19. Specifically, Plaintiff was assigned to the graveyard shift. Plaintiff's scheduled
7 shift was 11:00 p.m. to 4:00 a.m. On many, if not most days, he would clock in and then be told
8 to go home 29 minutes or 45 minutes later, wherein he would clock out and go home. Only on
9 rare occasions did he work until 4:00 a.m. or later. He was told UPS was overstaffed and there
10 was nothing that could be done about it so he had to go home after clocking out.

11 20. Similarly, during all or a substantial portion of the proposed PAGA Period,
12 Defendants maintained a uniform and systematic security screening policy that obliged Plaintiff
13 and other aggrieved employees to be subject to Defendants' control for loss prevention before
14 being able to clock in to work, which could take 5-15 minutes, and through a similar process
15 after clocking out, unfree to leave premises without an additional screening. Even though the
16 screening process was under Defendants' direct control, obligatory, and unavoidable, the time
17 spent in security screening was unpaid and off-the-clock, but subject to payment of at least the
18 applicable minimum wage. This screening process constituted de facto employer control under
19 the IWC Wage Order definition of "hours worked" whether UPS exercises control or not. *See*,
20 Wage Order 9-2004, § 2(H). It went as unpaid time, shaving many minutes off every
21 commencement and ending time of each shift. Defendants could have placed timeclocks before
22 and after each security screening area so that all time spent constituted paid hours worked, but
23 instead placed clocks in a manner to avoid paying hundreds of employees up to an additional 5-
24 15 or more minutes per day. Specifically, every time Plaintiff would enter the building, he was
25 required to go through security. This was the case regardless of whether or not he had a bag with
26 him. The amount of time it took would be as little as 30 seconds if there was nobody there, and
27 up to six minutes or longer if there were lots of people there. Even after going through the
28 security check, he would still have to walk approximately 5 to 8 minutes to get to the first place

1 where he could be permitted to clock in. The time it took to reach the closest location for Plaintiff
2 to clock in was all unpaid. Thus, after the time it took in the security line and to be able to clock
3 in, it was most frustrating for Plaintiff to then only be told to clock out and not be paid for the
4 expected and scheduled work shift.

5 21. Plaintiff was paid approximately \$14.25 per hour, so while it may not seem like
6 much, over time and in the aggregate for all Defendants' other aggrieved employees, the unpaid
7 wages could amount to anywhere from \$1.40 per shift per person to \$3.50 per shift per person.
8 The cost to have timeclocks relocated so employees could clock in before entering the work
9 areas, or just after the screening area at the end-of-shift, would be negligible to the otherwise
10 potential hundreds of thousands of dollars in unpaid minimum wages to workers caught up in
11 mandatory and unavoidable screening processes that were done for the sole benefit of
12 Defendants. This claim is based on the recent California Supreme Court decision in *Amanda*
13 *Frlekin v. Apple Inc.*, California Supreme Court Case No. S243805, 9th Circuit Case No. 115-
14 17382, issued on February 13, 2020.

15 22. Finally, Plaintiff and other aggrieved employees employed as package loaders
16 and unloaders were not provided suitable spaces for any break periods during times of inclement
17 weather or extreme heat or cold temperatures in violation of IWC Wage Order 9-2001, section
18 15. Pursuant to Labor Code sections 1198(c) and 558(a), Plaintiff will seek recovery of PAGA
19 civil penalties for each pay period that employees were subject to extreme weather conditions
20 without suitable space for heat or cooling, in an amount according to proof.

21 **FIRST CAUSE OF ACTION**

22 **PAGA Civil Penalties for Failure to Pay Reporting Time Wages**
23 **[Labor Code §§ 558, 1194, 1198, 1199(c), and 2698 and the "Reporting Time Pay" Section**
24 **of the applicable IWC Wage Order]**

25 **(By Plaintiff and Each Aggrieved Employee Against Each Defendant)**

26 23. Plaintiff incorporates all preceding paragraphs of this Complaint.

27 24. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
28 law, any provision of this code that provides for a civil penalty to be assessed and collected by
the Labor and Workforce Development Agency or any of its departments, divisions,
commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,

1 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
2 herself and other current or former employees pursuant to the procedures specified in Section
3 2699.3.”

4 25. Labor Code section 2699(f)(2) states: “For all provisions of this code except those
5 for which a civil penalty is specifically provided, there is established a civil penalty for a
6 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
7 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
8 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
9 each aggrieved employee per pay period for each subsequent violation.”

10 26. Defendants’ conduct violates Labor Code sections 218, 558, 1194, 1198, and
11 1199(c) as well as the “Reporting Time Pay” section of the applicable wage order.

12 27. Pursuant to the “Reporting Time Pay” Section of the applicable Wage Order,
13 “[e]ach workday an employee is required to report to work and does report, but is not put to work
14 or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall
15 be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours
16 nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than
17 the minimum wage.”

18 28. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and
19 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
20 1197.1, and 2699(a) and (f)(2), as well as attorney’s fees and costs all recoverable in an amount
21 according to proof.

22 29. Plaintiff, as a representative of the general public, will and does seek to recover
23 any and all penalties for each and every violation, in an amount according to proof, as to those
24 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
25 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
26 of California.

27 ///

28 ///

SECOND CAUSE OF ACTION

PAGA Civil Penalties for Failure to Minimum and/or Regular Wages for Mandatory Security Screening Processes

[Labor Code §§ 558, 1194, 1194.2, 1197, 1197.1, 1199(c), and 2698 and the applicable IWC Wage Order(s) for Payment of Minimum Wages for All “Hours Worked” and/or Subject to Employer Control]

(By Plaintiff and Each Aggrieved Employee Against Each Defendant)

30. Plaintiff incorporates all preceding paragraphs of this Complaint as is set forth in full herein.

31. Labor Code section 204(a) provides: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

32. Labor Code section 1194 states: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

33. Labor Code section 1194.2(a) provides: “(a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise.”

34. Labor Code section 1197 provides: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to

1 employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section
2 does not change the applicability of local minimum wage laws to any entity.”

3 35. Labor Code section 1197.1 provides in pertinent part: “Any employer or other
4 person acting either individually or as an officer, agent, or employee of another person, who pays
5 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state
6 or local law, or by an order of the commission shall be subject to a civil penalty, restitution of
7 wages, liquidated damages payable to the employee, and any applicable penalties imposed...”

8 36. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
9 violation of has been established to be subject to the default civil penalty provisions in Labor
10 Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those
11 for which a civil penalty is specifically provided, there is established a civil penalty for a
12 violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person
13 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
14 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
15 each aggrieved employee per pay period for each subsequent violation.”

16 37. Here, based on the foregoing, UPS failed to pay all wages owed for time spent
17 waiting in employer mandated security screenings. See, *Amanda Frlekin v. Apple Inc.*, California
18 Supreme Court Case No. S243805, 9th Circuit Case No. 115-17382, issued on February 13,
19 2020. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to
20 recover civil penalties pursuant to the PAGA for the alleged violations, as well as reasonable
21 attorney’s fees and costs as provided Labor Code section 2699(g) or other applicable statute for
22 recovery of attorney’s fees and costs.

23 38. Plaintiff, as a representative of the general public, will and does seek to recover
24 any and all penalties for each and every violation, in an amount according to proof, as to those
25 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
26 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
27 of California.

28 ///

THIRD CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Accurate Itemized Wage Statements
[Labor Code §§ 226(a), 226.3, 1198, 1199, 2699, and the “Records” Section of the
applicable IWC Wage Order]**

(By Plaintiff and Each Aggrieved Employee Against Each Defendant)

39. Plaintiff incorporates all preceding paragraphs of this Complaint.

40. Labor Code section 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer. . . ; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

41. Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

42. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

43. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

46. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

47. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

PAGA Civil Penalties for Failure to Timely Pay Wages Upon Separation of Employment
[Labor Code §§ 201, 202, 203, 256, 1198, and 2699]
(By Plaintiff and Each Aggrieved Employee Against Each Defendant)

49. Labor Code section 201 states: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.”

50. Labor Code section 203(a) states, in relevant part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee

1 who secretes or absents himself or herself to avoid payment to his or her, or who refuses to
2 receive the payment when fully tendered to his or her, including any penalty then accrued under
3 this section, is not entitled to any benefit under this section for the time during which he or he so
4 avoids payment.”

5 51. Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent*
6 *and apart from, any other penalty provided in this article*, every person who fails to pay the
7 wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
8 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred
9 dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any
10 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,
11 plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

12 52. Labor Code section 256 states: “The Labor Commissioner shall impose a civil
13 penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

14 53. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
15 of civil penalties for violations of the labor code, to be recovered through a civil action brought
16 by an aggrieved employee on behalf of himself or herself and other current or former employees
17 pursuant to the procedures specified in Section 2699.3.

18 54. As set forth herein, Defendants failed to pay all wages and penalties owed to
19 Plaintiff and other aggrieved employees within the timeline required by California Labor Code
20 sections 201-203. Defendants further failed to pay all waiting time penalties as required by Labor
21 Code section 203.

22 55. As a result, Defendants willfully violated the Labor Code and are liable to
23 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 210,
24 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
25 according to proof.

26 56. Plaintiff, as a representative of the general public, will and does seek to recover
27 any and all penalties for each and every violation, in an amount according to proof, as to those
28 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance

1 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
2 of California.

3 **FIFTH CAUSE OF ACTION**

4 **PAGA Civil Penalties for Violation of The Labor Code and IWC Wage Orders for
5 Failure to Maintain Accurate Timekeeping Records for all “Hours Worked”**

6 **[Labor Code §§ 558, 558.1, 1198(c) and 1197.1]**

7 **(By Plaintiff and Each Aggrieved Employee Against Each Defendant)**

8 57. Plaintiff incorporates all preceding paragraphs of this Complaint.

9 58. Labor Code section 558 subjects any employer or other person acting on behalf
10 of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor
11 Code or any provision regulating hours and days of work in any IWC Wage Order to a civil
12 penalty in the amount of \$50 for any initial violation for each pay period in which an employee
13 is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each
14 subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall
15 be paid to each affected employee.

16 59. Labor Code section 558.1(a) states: “Any employer or other person acting on
17 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
18 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates,
19 or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as
20 the employer for such violation.”

21 60. Labor Code section 1197.1 states that any employer or other person acting either
22 individually or as an officer, agent or employee of another person, which pays or causes to be
23 paid to any employee a wage less than the minimum fixed by an order of the commission shall
24 be subject to a civil penalty and restitution of wages payable to the employee in an amount of
25 \$100 for the initial violation for each pay period in which an employee underpaid in addition to
26 an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in
27 addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected
28 employee.

61. Labor Code section 1174(d) requires each employee to “[k]eep, at a central
location in the state or at the plants or establishments at which employees are employed, payroll

1 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
2 units earned by and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments.”

4 62. The “Records” section of the applicable IWC wage order requires each employer
5 to maintain “[t]ime records showing when the employee begins and ends each work period. Meal
6 periods, split shift intervals and total daily hours worked shall also be recorded.”

7 63. California Labor Code section 1174.5 imposes a \$500 civil penalty for any failure
8 to maintain records required by Section 1174(d).

9 64. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
10 of civil penalties for violations of the labor code, to be recovered through a civil action brought
11 by an aggrieved employee on behalf of himself or herself and other current or former employees
12 pursuant to the procedures specified in Section 2699.3.

13 65. As set forth above, UPS and Doe Defendants were the employer, or other person
14 acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order
15 regulating reporting time pay, Labor Code sections 218, 203, 226, 1194, 1197, and 1198, and
16 caused the aggrieved employees to be paid less than the minimum set by the IWC Wage Order.
17 As a result, Defendants are liable for civil penalties under Labor Code sections 558, 558.1, and
18 1197.1.

19 66. Defendants failed to maintain all records as required by law, including but not
20 limited to the gross wages earned or the accurate total hours worked.

21 67. As a result, Defendants willfully violated the Labor Code and are liable to
22 Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections
23 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
24 according to proof.

25 68. Plaintiff, as a representative of the general public, will and does seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

of California.

SIXTH CAUSE OF ACTION

PAGA Civil Penalties for Failure to Provide Suitable Area to Address Inclement Weather Conditions

[IWC Wage Order 9-2001, § 15]

(By Plaintiff and Each Aggrieved Employee Against Each Defendant)

69. Plaintiff incorporates all preceding paragraphs of this Complaint.

70. IWC Wage Order 9-2001, section 15 provides:

15. Temperature:

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

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60 degrees F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68 degrees F.

(C) A temperature of not less than 68 degrees F shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

71. Here, Plaintiff and other aggrieved hourly employees who provided on-site unloading and loading of parcels and packages within the PAGA period were subject to both extreme cold and extreme heat conditions without being provided any space for reasonable comfort. This conduct violated the IWC Wage Order and subjects UPS to the civil penalty provisions under the PAGA as permitted by Labor Code section 2699.5, and Labor Code section 558(a), in the amount of \$50.00 for each initial violation per employee per pay period and a \$100.00 subsequent civil penalty for violation of the Wage Order provision for each employee for each subsequent pay period during the PAGA Period.

72. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 558(a) and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount according to proof.

73. Plaintiff, as a representative of the general public, will and does seek to recover

any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

VII.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

1. For PAGA civil penalties to the extent permitted pursuant to the Labor Code, and Orders of the Industrial Welfare Commission including, but not limited to, waiting time penalties under Labor Code section 203 and penalties under Labor Code section 226(e);

2. For maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiff and his counsel with all enforcement capability as if this action has been instituted by the Department of Labor Standards enforcement ("DLSE");

3. On the First Cause of Action: For recovery of civil penalties as permitted by Labor Code sections 558(a)(1)-(2), 1197.1, 2699(f)(2), and 2699.3 for each pay period during the applicable limitations period where Defendants' payroll and time-keeping records show that an employee clocked in for a shift but was instructed to clock out for lack of work without paying a "reporting time" premium as required by applicable IWC Wage Order, section 5 in an amount according to proof, subject to Court approval and distributed to the California LWDA and to "aggrieved employees" in the manner required by Labor Code section 2699(i);

4. On the Second Cause of Action: For recovery of civil penalties as permitted by Labor Code sections 1194, 1194.2, 1197, 1197.1, and 2699(f)(2) for each pay period during the applicable limitations period where Plaintiff and other aggrieved hourly non-exempt employees were not paid for 5 to 15 minutes wait time for mandatory security screenings and under direct subject of Defendants' control, and thus not paid for all hours worked as required by California law. Such recovery of civil penalties may be recovered in an amount according to proof, subject to Court approval and distributed to the California LWDA and to "aggrieved employees" in the manner required by Labor Code section 2699(i).

1 5. On the Third Cause of Action: For recovery of civil penalties as permitted by
2 Labor Code sections 226(a) and 226.3 for each pay period during the applicable limitations
3 period for Defendants' failure to provide accurate itemized wage statements to account for
4 reporting time pay or unpaid wages for time spent in mandatory security screening processes
5 under the direct control of the Defendants, in an amount according to proof, subject to Court
6 approval and distributed to the California LWDA and to "aggrieved employees" in the manner
7 required by Labor Code section 2699(i);

8 6. On the Fourth Cause of Action: For recovery of civil penalties as permitted by
9 Labor Code sections 203, 210, and/or 256 for each pay period during the applicable limitations
10 period for failing to provide wages timely to terminated employees upon separation of
11 employment in an amount according to proof, subject to Court approval and distributed to the
12 California LWDA and to "aggrieved employees" in the manner required by Labor Code section
13 2699(i);

14 7. On the Fifth Cause of Action: For recovery of PAGA civil penalties for failure to
15 maintain required timekeeping records under Labor Code section 1174 and IWC Wage Order 9-
16 2001, section 7, for all "hours worked" for each pay period during the applicable limitations
17 period, in an amount according to proof subject to Court approval and distributed to the California
18 LWDA and to "aggrieved employees" in the manner required by Labor Code section 2699(i);

19 8. On the Sixth Cause of Action: For recovery of PAGA civil penalties for failure to
20 provide suitable breaking locations to address inclement or extreme weather conditions in
21 violation of IWC Wage Order 9-2001, section 15, in an amount according to proof, subject to
22 Court approval and distributed to the California LWDA and to "aggrieved employees" in the
23 manner required by Labor Code section 2699(i);

24 9. On all Causes of Action: For recovery of civil penalties pursuant to Labor Code
25 section 2699(f)(2), to the extent that 2699(a) does not apply and/or where a statutory civil penalty
26 is not specifically provided, including but not limited to failing to comply with Labor Code
27 sections 1194, 1194.2, 1197, 1197.1, 201-203, 226, 1174, and 1198, in an amount according to
28 proof, subject to Court approval and distributed to the California LWDA and to "aggrieved

employees” in the manner required by Labor Code section 2699(i).

10. For post-judgment interest at the California legal rate per annum to the extent permitted by law including, but not limited to, Labor Code sections 218.6 and 1194;

11. For reasonable attorneys’ fees and cost of suit and, to the extent permitted by law, including pursuant to Labor Code sections 218.5, 226(e), 226(h), 1194, 2699(g), and/or Code of Civil Procedure section 1021.5 for conferring a public benefit in the enforcement of an important state interest;

12. Determine the appropriate remedy to compensate Plaintiff, and other potentially aggrieved employees, as required to promote fairness and justice, including but not limited to establishing procedures for compensation, and fluid recovery or common fund, if appropriate;

13. For pre-judgment interest at the California legal rate per annum, to the extent applicable and permitted by California law; and

14. Any other relief as this Court deems equitable, proper and just.

Dated: April 27, 2019

COHELAN KHOURY & SINGER
LEBE LAW, APC

By: _____


Michael D. Singer, Esq.
J. Jason Hill, Esq.

Attorneys for Plaintiff DEION WALKER

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

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

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

February 19, 2020

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

United Parcel Service, Inc.
55 Glenlake Parkway NE
Atlanta, GA 30328

United Parcel Service, Inc.
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3505

Re: Notice pursuant to California Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA") sent by Deion Walker, on behalf of himself and all "aggrieved" hourly-paid California-based employees of United Parcel Service, Inc.

Dear PAGA Administrator:

Please be advised that Deion Walker ("Walker" or "Claimant") has retained Lebe Law, A Professional Law Corporation, and Cohelan Khoury & Singer to represent him and the other aggrieved employees for wage and hour claims against his former employer United Parcel Service, Inc. ("UPS").

UPS has violated several Labor Code provisions and is therefore liable for civil penalties under California Labor Code sections 2698, *et seq.* We request your agency investigate the claims against UPS. This letter will serve as notice of these allegations pursuant to the Private Attorneys General Act of 2004 ("PAGA"). Cal. Lab. Code § 2699.3. A copy of this notice is being sent to UPS by certified mail at the addresses above. The PAGA civil penalties sought by any proposed PAGA representative action are based on violations of Labor Code sections 203, 210, 256, 226.3, 558(a), 1173, 1198, 1194.2, 1197, 1197.1, and 1199(c) for violations of IWC Wage Order 9-2001, sections 5, 7, and 15. Any action by Claimant under the PAGA will not seek underpaid wages under Labor Code sections 558(a)(2) and (3) based on the decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239.

Factual Statement

Claimant worked for UPS from approximately November 11, 2019 through January 10, 2020 as a non-exempt, hourly-paid on-site package loader/unloader working out of a Los Angeles UPS hub. Claimant is and was a resident of the State of California during the applicable limitations period.

Claimant alleges that during his employment, UPS failed to comply with the California Labor Code and section 5 of the applicable IWC Wage Order 9-2001, as detailed below, which resulted in liability for civil penalties under applicable regulations and provisions of the California Labor Code. In essence, Claimant and other similar hourly-paid package loaders/unloaders would routinely show up for scheduled 5-hour shifts but then be dismissed from work within minutes of arrival without being provided reporting time wages, which causing them to lose ability for other gainful employment. Claimant and other aggrieved employees in similar positions were scheduled to work 5 days per week, arriving and clocking in for shifts that were usually from 11:00 p.m. until 4:00 a.m. During the proposed PAGA period (one year prior to the date of this Notice), Claimant was designated as an hourly non-exempt employee for shifts of approximately 5 hours in length 5 days per week as a package loader/unloader. Despite reporting for scheduled shifts, going through security, and then clocking into work, Claimant estimates that 3-4 days per week UPS would dismiss him and others from their shifts after arrival, without being provided reporting time wages of at least one-half their scheduled shift time but no less than two hours and no more than four hours, as otherwise required by applicable IWC Wage Order(s). He and other co-workers would occasionally see trucks arriving at the terminal as they were leaving but they were only paid their clocked time (if they were allowed to clock in at all after showing up) and not wages for at least 2 hours of the expected work shift at the requisite rate of pay as required by California law.

Claimant is informed and believes that UPS's failure to timely honor and pay "reporting time" wages was systematic and uniform throughout the state of California, and resulted in considerable harm by arriving at work and being dismissed from scheduled work shifts since Claimant and other aggrieved employees had relied upon UPS's scheduled shifts and had to forego other work opportunities. Thus, Claimant and other aggrieved employees were not only not paid required wages for reporting to work, but the working conditions left them without options to engage in other compensable work when UPS sent them home at the start of a scheduled shift, thus undermining both the payment of wages and standard working conditions required by the Industrial Welfare Commission ("IWC") regulations.

In addition to unpaid "reporting time" wages for canceled or shortened shifts, Claimant and other aggrieved on-site hourly employees suffered wage loss as a result of UPS's mandated security line delays and lack of proper placement of timeclocks, resulting in unpaid "hours worked" of anywhere from 5-15 minutes per shift. Such screenings were required whether employees had personal items with them or not. Had UPS placed timeclocks at the security line entrance, Claimant would have been paid for hours worked and subject to UPS control. Claimant's rate of pay was approximately \$14.25 per hour. Assuming an average of 10 minutes unpaid time per day, Walker's, and other aggrieved employees', wages were shorted at least \$1.42 per shift at the commencement of the shift and a similar amount of time and wages at the end of shift for the same reasons (i.e., improper placement of timeclocks). The cost to UPS to place timeclocks at just before and just after the security screening area is negligible compared to potentially many thousands of dollars employees were unpaid while subject to UPS's control. Assuming a loss of \$1.42 at both entry and exit from UPS facilities (\$2.84 per day) using Claimant's base rate, for 1,000 shifts per year per loader/unloader, it would result in a loss of wages in the area of \$2,840. If applied to other employees, even if only 100 others were subject to same constraints and controls, it would yield UPS a savings of \$284,000. State-wide practices and assuming 24-7 operations would allow UPS a tremendous windfall in unpaid wages and

associated taxes reaching into the millions of dollars. The cost to move timeclocks to the security screening areas would be the cost of labor and installation of the clocks immediately before (at shift start) and immediately after (at shift end) is negligible compared to the unpaid wages. UPS knows that the security lines are for its sole benefit and that it is a required control element for employees so as to reduce the risk of loss. Moving the timeclocks would benefit both UPS's interests in loss management and the employees' interests to be paid for all hours worked. See, *Amanda Frlekin v. Apple Inc.*, California Supreme Court Case No. S243805, 9th Circuit Case No. 115-17382, issued on February 13, 2020.

Finally, the working conditions provided by UPS were insufficient as the company failed to maintain adequate or suitable temperatures to deal with inclement cold or hot weather. During work shifts, Claimant alleges both conditions of extreme heat/humidity and cold conditions which were not addressed by UPS to allow for an area capable of meeting IWC Wage Order 9-2001, section 15 requirements, such that he and other aggrieved employees were continually subject to extreme temperatures, which resulted in many absences for illness. This is, in part, why UPS overscheduled employees like Walker, only to send them home if sufficient staffing for expected package volume was satisfied.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order individually and on behalf of all other aggrieved employees of UPS in the State of California. Claimant alleges that the Employer:

1. Failed to pay Claimant and other aggrieved employees all wages due, including reporting time wages;
2. Failed to pay minimum/regular wages for time spent in security screening both in and out of the facilities;
3. Failed to provide suitable area for extreme cold and/or humid conditions;
4. Failed to provide accurate itemized wage statements; and
5. Failed to timely pay all wages upon separation of employment.

Accordingly, Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on UPS's alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), but *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239.

CIVIL PENALTIES FOR FAILURE TO PAY REPORTING TIME WAGES

(Violation of Labor Code §§, 1198, 1199 (b) and (c), 2699 and the "Reporting Time Pay"
Section of the applicable IWC Wage)

Section 5(A) of the applicable IWC Wage Order states: "Each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work; the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

Labor Code section 1173 provides in pertinent part: “It is the continuing duty of the Industrial Welfare Commission, hereinafter referred to in this chapter as the commission, to ascertain the wages paid to all employees in this state, to ascertain the hours and conditions of labor and employment in the various occupations, trades, and industries in which employees are employed in this state, and to investigate the health, safety, and welfare of those employees....”

Labor Code section 1198 provides: “The maximum hours of work and the standard *conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees.* The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” [emphasis added.]

Labor Code section 1199 provides in pertinent part:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following....

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code sections 1198 and 1199, which are statutes listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provide that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

(a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

(b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.

(c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

Labor Code section 204(a) provide: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was

performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time."

Labor Code section 218 provides in pertinent part: "Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.

Claimant alleges that UPS regularly scheduled its non-exempt employees for loading and unloading vehicles at UPS hubs and terminals and required employees such as Claimant to report each day for work, to only then be told there was insufficient work and they were being dismissed from their otherwise scheduled work shift and told to leave. If they were clocked in, Claimant and other aggrieved employees would be told to clock out and leave, despite having arrived at the workplace ready, willing, and able to work as scheduled. Claimant and other aggrieved employees were subject to discipline if they failed to report for a shift, but were not provided "reporting time" wages as required by Section 5 of the IWC Wage Order. Claimant alleges that this policy resulted in not just a direct violation of the applicable Wage Order, but is also in violation of various provisions of the California Labor Code because Claimant and other such aggrieved employees were not paid reporting time wages. These scheduled but otherwise canceled shifts burdened employees by limiting their ability to engage in other activities but also resulted in the failure to receive minimum compensation as required by the IWC. Employees such as Claimant were often not paid any wages, including regular and/or minimum wages, for reporting to a shift, and were never paid the requisite minimum reporting time pay when a shift was canceled as required under California law. Claimant intends to pursue remedies pursuant to the PAGA for the alleged violation on behalf of himself and all other aggrieved employees in the state of California.

Claimant alleges that he and other aggrieved employees were also summarily dismissed on a regular and uniform basis by UPS and told their shift was canceled even after clocking in and being ready to work their full shift without being provided at least half the scheduled day's work in their scheduled shift (in addition to alleging not being paid for half their day's scheduled hours of at least two but not more than four hours). This violated section 5 of the IWC Wage Order and constitutes a violation of Labor Code section 1199(c).

The California Legislature expressly delegated to the Industrial Welfare Commission the authority to promulgate wage orders setting minimum wages, and standard working conditions for all employees. *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 799-800. Here, the IWC promulgated the requirement for reporting time pay under Section 5 of the applicable Wage Order (Wage Order 9 for transportation industry, i.e., UPS). This is a requirement for working conditions and payment of wages for at least two hours when a worker arrives for a scheduled shift and then is dismissed by the employer from a regular work shift, even if due to insufficient

work volume. The Wage Order and California law requires compensation be paid in such situations as a cost of doing business and rejects that employees who show up to a scheduled shift ready to work be simply dismissed from the shift without reporting time wages.

Thus, not only does UPS's policy and practice violate the Wage Order on reporting time pay (and thus subjects UPS to civil penalties pursuant to Labor Code 558(a)), but it violates Labor Code sections 203, 204(a), 218, 226, 1198, and 1199 where default civil penalties may be pursued under the PAGA. Labor Code § 2699(f)(2). Labor Code sections 203, 204, 226, 1198, and 1199 are all statutes that are specifically listed in Labor Code section 2699.5 as a basis for a representative to claim civil penalties.

**CIVIL PENALTIES FOR FAILURE TO PAY ALL MINIMUM AND/OR REGULAR
WAGES**

(Labor Code §§ 204, 1194, 1194.2 1197, and 1197.1)

Labor Code section 204(a) provides: "All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month."

Labor Code section 1194 states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1194.2(a) provides: "(a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to authorize the recovery of liquidated damages for failure to pay overtime compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute of limitations on an action for wages from which the liquidated damages arise."

Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1197.1 provides in pertinent part: "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of

wages, liquidated damages payable to the employee, and any applicable penalties imposed...”

Each of these statutes is listed in Labor Code section 2699.5 as a statute for which violation of has been established to be subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

Here, based on the foregoing, UPS failed to pay all wages owed for time spent waiting in employer mandated security screenings. See, *Amanda Frlekin v. Apple Inc.*, California Supreme Court Case No. S243805, 9th Circuit Case No. 115-17382, issued on February 13, 2020. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to recover civil penalties pursuant to the PAGA for the alleged violations, as well as reasonable attorney’s fees and costs as provided Labor Code section 2699(g) or other applicable statute for recovery of attorney’s fees and costs.

**CIVIL PENALTIES FOR FAILURE TO PROVIDE SUITABLE AREA TO ADDRESS
INCLEMENT WEATHER CONDITIONS**
(IWC Wage Order 9-2001, section 15)

IWC Wage Order 9-2001, section 15 provides:

15. Temperature:

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

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60 degrees F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68 degrees F.

(C) A temperature of not less than 68 degrees F shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Here, Claimant and other aggrieved hourly employees who provided on-site unloading and loading of parcels and packages within the applicable limitations period were subject to both extreme cold and extreme heat conditions without being provided any space for reasonable comfort. This conduct violated the IWC Wage Order and subjects UPS to the civil penalty provisions under the PAGA as permitted by Labor Code section 2699.5, and Labor Code section 558(a) in the amount of \$50.00 for each initial violation per employee per pay period and a \$100.00 subsequent civil penalty for violation of the Wage Order provision for each employee for each subsequent pay period during the applicable PAGA statute of limitations period.

Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations, including a request for attorneys' fees and costs as required pursuant to Labor Code section 2699(g) and/or other applicable statute permitting such recovery.

CIVIL PENALTIES FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, and IWC Wage Order 9-2001 § 7)

Labor Code section 226(a) provides in pertinent part: “(a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) **gross wages earned**, (2) **total hours worked by the employee**, ... (5) **net wages earned** ... and (9) **all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.**” [Emphasis added.]

Labor Code section 226.3 provides in pertinent part: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law...”

IWC Wage Order 9-2001, section 7 provides in pertinent part:

“(A) Every employer shall keep accurate information with respect to each employee including the following....

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request....

(D) Clocks shall be provided in all major work areas or within reasonable distance thereto insofar as practicable.”

Here, UPS failed entirely in its duty to maintain accurate records of all hours worked and instead placed that burden on the employees. This time-keeping and record-keeping requirement is a non-delegable duty. Accordingly, UPS’s policies and procedures resulted in inaccurate pay records which failed to account for the on-call time and on-duty time. The aforementioned conduct violated Labor Code section 226(a), subsections (1), (2), (5) and (9). It also violated the applicable Wage Order on required recording keeping. Finally, the practices described herein

violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above.

Labor Code section 226.3 provides an additional recoverable penalty “in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The civil penalty assessments under Section 226.3 “are in addition to any other penalty provided by law.”

Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations, including a request for attorneys’ fees and costs as required pursuant to Labor Code section 2699(g) and/or other applicable statute permitting such recovery.

**FAILURE TO TIMELY PAY ALL WAGES DUE TO TERMINATED/SEPARATED
EMPLOYEES**

(Labor Code §§ 203, 210, and 256)

Labor Code section 203 provides: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.” Labor Code section 203 is a statute listed under Labor Code section 2699.5 for which civil penalties may be recovered under the default civil penalty scheme outlined in Labor Code section 2699(f)(2), cited above. Labor Code sections 210 and 256 provide an independent and non-cumulative basis to collect further civil penalties for the violations claimed herein.

California Labor and Workforce Development Agency
United Parcel Service, Inc.
Re: Deion Walker
February 19, 2020
Page 10

Here, Claimant and other aggrieved hourly employees who provided on-site unloading and loading of parcels and packages and who separated or were terminated from their employment within the applicable limitations period were not paid all wages due in a timely manner as a result of the unpaid reporting time wages and off-the-clock time resulting directly from UPS's express policies and practices. Consequently, Claimant, on behalf of himself and other aggrieved employees, intends to file a representative action to recover civil penalties pursuant to the PAGA for the alleged violations. Such recovery of civil penalties will include a request for attorneys' fees and costs pursuant to Labor Code section 2699(g) and/or other applicable statute allowing for such recovery.

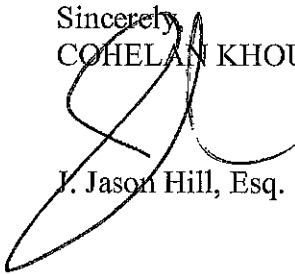
**POTENTIAL INDIVIDUAL LIABILITY OF UNKNOWN MANAGING AGENTS,
OFFICERS, AND/OR DIRECTORS**

California Labor Code section 558.1 provides: "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Pursuant to California law, failure to pay wages to employees vitiates any corporate veil protections as to any officer, director, and/or managing director who engaged in actions to violate the Labor Code or applicable IWC Wage Orders. See, *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809, 238 Cal. Rptr. 3d 465. Specifically, the court held that "if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer." *Id.* at *820. See also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same).

CONCLUSION

UPS has violated or has caused to be violated numerous California wage and hour laws. Claimant requests that the agency investigate the above allegations and provide notice of the allegations pursuant to the PAGA's provisions. Alternatively, Claimant requests the agency inform him if it does not intend to investigate these violations so that he may bring a PAGA suit against UPS on behalf of himself and the other aggrieved employees.

Sincerely,
COHELAN KHOURY & SINGER


J. Jason Hill, Esq.

cc:

Via Email Only

Jonathan M. Lebe, Esq.

Lebe Law APC

5723 Melrose Avenue, Suite 100

Los Angeles, CA 90038-3889

jon@lebelaw.com