

THE KICK LAW FIRM, APC
Taras Kick (State Bar No. 143379)
(Taras@kicklawfirm.com)
Daniel J. Bass (State Bar No. 287466)
(Daniel@kicklawfirm.com)
Roy K. Suh (State Bar No. 283988)
(Roy@kicklawfirm.com)
815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Facsimile: (310) 395-2088

Attorneys for Plaintiff COREY J. DEVINE,
individually, and on behalf of all others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COREY J. DEVINE, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPSTONE LOGISTICS, LLC, a Delaware
Limited Liability Company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 20STCV39030

**FIRST AMENDED COMPLAINT FOR
VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code § 2698, et seq.]

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 PLAINTIFF COREY J. DEVINE (“PLAINTIFF”) an individual, demanding a jury trial,
3 on behalf of himself and all other aggrieved employees, hereby alleges as follows:

4 **PLAINTIFF**

5 1. PLAINTIFF brings this action on behalf of himself and all other “aggrieved
6 employees” who worked for Defendants CAPSTONE LOGISTICS, LLC, a Delaware Limited
7 Liability Company; and DOES 1 through 100 inclusive (collectively “DEFENDANTS”) to
8 recover, among other things, wages and penalties from unpaid wages earned and due, including
9 but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
10 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
11 quitting employees, failure to indemnify employees for necessary expenditures and/or losses
12 incurred in discharging their duties, failure to provide accurate itemized wage statements, failure
13 to maintain required records, and interest, attorneys’ fees, costs, and expenses.

14 2. PLAINTIFF is a male citizen and resident of the State of California. At all times
15 material to this complaint, PLAINTIFF was employed by DEFENDANTS in the State of
16 California as a non-exempt employee.

17 3. PLAINTIFF worked for DEFENDANTS from on or about April 19, 2018 to on or
18 about August 7, 2020, his last day of work.

19 4. PLAINTIFF primarily worked for DEFENDANTS at a location operated by
20 DEFENDANTS’ client, Sysco, but under the supervision and control of DEFENDANTS’ on site
21 managers and supervisors.

22 5. PLAINTIFF worked for DEFENDANTS as a “Lumper” a specific role of
23 Warehouse Clerk, but would often be instructed by DEFENDANTS’ supervisors and managers to
24 log into DEFENDANTS’ system under different job titles, resulting in different hourly rates of
25 pay based on those job duties, without forewarning from the DEFENDANTS as to what his pay
26 would be for those different functions.

27 6. PLAINTIFF regularly worked overtime at DEFENDANTS direction, but
28 DEFENDANTS failed to properly calculate PLAINTIFF’s regular rate of pay, resulting in a

1 systematic underpayment of wages to PLAINTIFF, including overtime wages and break premium
2 payments.

3 7. PLAINTIFF was issued wage statements by DEFENDANTS that failed to state all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate.

6 8. When DEFENDANTS issued wage statements to PLAINTIFF, DEFENDANTS
7 would separate PLAINTIFF's overtime hours and double time from the premium paid for those
8 corresponding hours and with the overtime and double time premiums not reflecting the rate at
9 which they were paid. Moreover, PLAINTIFF's overtime premium payments were frequently less
10 than one-half the payment received for the corresponding overtime hours, resulting in an
11 underpayment to PLAINTIFF.

12 9. PLAINTIFF was issued his final paychecks on or about August 14, 2020 and
13 September 4, 2020, despite PLAINTIFF's separation from employment on or about August 7,
14 2020.

15 10. DEFENDANTS issued "Retro Pay" to PLAINTIFF weeks after the pay period
16 listed on the corresponding wage statement for that "Retro Pay" with no explanation as to its
17 purpose.

18 11. When PLAINTIFF asked questions about his pay, or pointed out errors in his pay
19 to DEFENDANTS' managers, DEFENDANTS' managers would give PLAINTIFF dismissive
20 responses, including but not limited to "that is all we can do" and "it is what it is" without further
21 assistance or explanation.

22 **DEFENDANTS**

23 12. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
24 CAPSTONE LOGISTICS, LLC and at all times relevant hereto was, a Delaware Limited
25 Liability Company is, organized and existing under the laws of the State of Delaware.
26 PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT
27 CAPSTONE LOGISTICS, LLC is authorized to conduct business in the State of California, and
28 does conduct business in the State of California. Specifically, DEFENDANT CAPSTONE

1 LOGISTICS, LLC maintains offices and facilities and conducts business in, and engages in
2 illegal payroll practices or policies in, the County of Los Angeles, State of California.

3 13. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
4 PLAINTIFF at this time, and PLAINTIFF therefore sues such DEFENDANTS under fictitious
5 names. PLAINTIFF is informed and believes, and thereon alleges, that each DEFENDANT
6 designated as a DOE is highly responsible in some manner for the events and happenings referred
7 to herein, and legally caused the injuries and damages alleged in this Complaint. PLAINTIFF
8 will seek leave of the court to amend this Complaint to allege their true names and capacities
9 when ascertained. The DEFENDANTS, and each of them, were alter egos of each other and/or
10 engaged in an integrated enterprise with each other. Additionally, all of the DEFENDANTS were
11 joint employers of PLAINTIFF.

12 14. There exists, and at all times herein mentioned existed, a unity of interest and
13 ownership between the named DEFENDANTS, including DOES, such that any corporate
14 individuality and separateness between the named defendants has ceased, and that the named
15 Defendants are alter egos in that the named DEFENDANTS effectively operate as a single
16 enterprise, or are mere instrumentalities of one another.

17 15. At all material times herein, each DEFENDANT was the agent, servant, co-
18 conspirator and/or employer of each of the remaining defendants, acted within the purpose, scope,
19 and course of said agency, service, conspiracy and/or employment and with the express and/or
20 implied knowledge, permission, and consent of the remaining Defendants, and ratified and
21 approved the acts of the other DEFENDANTS. However, each of these allegations are deemed
22 alternative theories whenever not doing so would result in a contradiction with the other
23 allegations.

24 16. Whenever reference is made in this Complaint to any act, deed, or conduct of
25 Defendants, the allegation means that DEFENDANTS engaged in the act, deed, or conduct by or
26 through one or more of its officers, directors, agents, employees, or representatives who was
27 actively engaged in the management, direction, control, or transaction of DEFENDANTS'
28 ordinary business and affairs.

1 17. As to the conduct alleged herein, each act was authorized, ratified or directed by
2 DEFENDANTS' officers, directors, or managing agents.

3 18. At all relevant times herein, PLAINTIFF and other aggrieved employees were
4 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
5 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
6 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
7 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
8 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
9 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
10 itemized statements for each pay period; failing to properly compensate PLAINTIFF and other
11 aggrieved employees for necessary expenditures; and requiring, permitting or suffering the
12 employees to work off the clock, in violation of the California Labor Code and the applicable
13 Welfare Commission ("IWC") Orders.

14 19. PLAINTIFF is informed and believes, and thereon alleges, that each and every of
15 the acts and omissions alleged herein were performed by, and/or attributable to, all
16 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
17 of each of the other DEFENDANTS, and that said acts and failures to act were within the course
18 and scope of said agency, employment and/or direction and control.

19 20. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
20 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
21 provision regulating minimum wages or hours and days of work in any order of the Industrial
22 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

23 21. As a direct and proximate result of the unlawful actions of DEFENDANTS,
24 PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet
25 unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

26 **JURISDICTION AND VENUE**

27 22. The Superior Court of the State of California has jurisdiction in this matter because
28 PLAINTIFF is a resident of the State California, and DEFENDANTS are qualified to do business

1 in California and regularly conduct business in California. Further, no federal question is at issue
2 because the claims are based solely on California law.

3 23. Venue is proper in this judicial district and the County of Los Angeles, California
4 because aggrieved employees performed work for DEFENDANTS in the County of Los Angeles,
5 DEFENDANTS maintain offices and facilities and transact business in the County of Angeles,
6 and DEFENDANTS' illegal payroll policies and practices, which are the subject of this action
7 were applied, at least in part, to PLAINTIFF, and other persons similarly situated in the County of
8 Los Angeles.

9 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

10 24. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
11 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
12 former non-exempt aggrieved employees of DEFENDANTS working as "Managers" or in similar
13 non-exempt positions in the State of California at any time within the period beginning one (1)
14 year and sixty five (65) days prior to the filing of this action, and ending at the time this action
15 settles or proceeds to final judgment ("PENALTY PERIOD").

16 25. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice by online filing
17 on August 9, 2019 to the California Labor and Workforce Development Agency ("LWDA") and
18 by certified mail to DEFENDANTS of the specific provisions of the Labor Code and IWC Wage
19 Orders alleged to have been violated, including the facts and theories to support the alleged
20 violations. PLAINTIFF has not received any response from the LWDA. As PLAINTIFF has
21 waited more than sixty-five (65) days from the August 4, 2020 submission and postmark date of
22 PLAINTIFF'S written notice before filing this action, PLAINTIFF has complied with all of the
23 requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

24 **FACTUAL ALLEGATIONS**

25 **Failure to Provide Required Meal Periods**

26 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

27 26. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
28 policies and practices to deprive their non-exempt employees all wages earned and due,

1 DEFENDANTS required, permitted or otherwise suffered PLAINTIFF other aggrieved
2 employees to take less than the 30-minute meal period, or to work through them, and have failed
3 to otherwise provide the required meal periods to PLAINTIFF and other employees pursuant to
4 California Labor Code § 226.7, 512 and IWC Order No. 9-2001, § 11.

5 27. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
6 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
7 who were not provided with a meal period, in accordance with the applicable wage order, one
8 additional hour of compensation at each employee's regular rate of pay for each workday that a
9 meal period was not provided.

10 28. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
11 1197, and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF and other
12 aggrieved employees for all hours worked during their meal periods.

13 29. As a proximate result of the aforementioned violations, PLAINTIFF and other
14 aggrieved employees have been damaged in an amount according to proof at trial, and seek all
15 wages earned and due, interest, penalties, expenses, and costs of suit.

16 **Failure to Provide Required Rest Periods**

17 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

18 30. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
19 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
20 failed to provide rest periods to PLAINTIFF and other aggrieved employees as required under
21 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12.

22 31. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
23 Order No. 9-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were
24 not provided with a rest period, in accordance with the applicable wage order, one additional hour
25 of compensation at each employee's regular rate of pay for each workday that a rest period was
26 not provided.

27 32. As a proximate result of the aforementioned violations, PLAINTIFF and other
28 aggrieved employees have been damaged in an amount according to proof at trial, and seek all

1 wages earned and due, interest, penalties, expenses, and costs of suit.

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

4 33. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
5 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved
6 employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of
7 pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
8 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
9 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of
10 eight (8) hours on the seventh consecutive day of work in any workweek.

11 34. PLAINTIFF and other aggrieved employees are current and former non-exempt
12 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
13 Order No. 9-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate
14 PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the
15 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
16 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
17 California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3; requiring, permitting
18 or suffering PLAINTIFF and other aggrieved employees to work off the clock; requiring,
19 permitting or suffering PLAINTIFF and other aggrieved employees to work through meal and
20 rest breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved
21 employees worked; failing to properly maintain PLAINTIFF's and other aggrieved employees'
22 records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period;
23 and other methods to be discovered.

24 35. In violation of California law, DEFENDANTS have knowingly and willfully
25 refused to perform their obligations to compensate PLAINTIFF and other aggrieved employees
26 for all wages earned and all hours worked. As a proximate result, PLAINTIFF and other
27 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
28 and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
2 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
3 this Court.

4 36. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
5 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
6 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
7 Code and IWC Wage Orders, PLAINTIFF and other aggrieved employees are entitled to recover
8 the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
9 fees, expenses, and costs of suit.

10 37. As a proximate result of the aforementioned violations, PLAINTIFF and other
11 aggrieved employees have been damaged in an amount according to proof at trial, and seek all
12 wages earned and due, interest, penalties, expenses, and costs of suit.

13 **Failure to Pay Minimum Wages**

14 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

15 38. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
16 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
17 worked in a payroll period is unlawful.

18 39. During the PENALTY PERIOD, DEFENDANTS failed to pay PLAINTIFF and
19 other aggrieved employees minimum wages for all hours worked by, among other things:
20 requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work off the
21 clock; requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work
22 through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and
23 other aggrieved employees worked; failing to properly maintain PLAINTIFF's and other
24 aggrieved employees' records; failing to provide accurate itemized wage statements to
25 PLAINTIFF and other aggrieved employees for each pay period; and other methods to be
26 discovered.

27 40. DEFENDANTS' conduct described herein violates California Labor Code §§
28 1194, 1197, and IWC Wage Order No. 9-2001, § 4. As a proximate result of the aforementioned

1 violations, PLAINTIFF and other aggrieved employees have been damaged in an amount
2 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
3 1194, 1994.2, 1197.1, and other applicable provisions under the Labor Code and IWC Wage
4 Orders, PLAINTIFF and other aggrieved employees are entitled to recover the unpaid balance of
5 wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and
6 costs of suit.

7 **Failure to Timely Pay Wages During Employment**

8 **[Cal. Labor Code § 204]**

9 41. Pursuant to California Labor Code § 204, for all labor performed between the 1st
10 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
11 employees between the 16th and 26th day of the month during which the labor was performed.
12 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
13 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
14 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
15 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
16 no later than the payday of the next regular payroll period.

17 42. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
18 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by
19 the next regular payroll period as required by California Labor Code § 204.

20 **Failure to Pay All Wages Due to Discharged or Quitting Employees**

21 **[Cal. Labor Code §§ 201, 202, 203]**

22 **(Against All DEFENDANTS)**

23 43. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
24 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
25 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
26 and unpaid at the time of discharge are due and payable immediately.

27 44. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
28 required to pay all accrued wages due to an employee no later than 72 hours after the employee

1 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
2 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

3 45. California Labor Code § 203 provides that if an employer willfully fails to pay, in
4 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
5 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
6 compensation to the employee at the same rate for up to 30 workdays.

7 46. During the PENALTY PERIOD, DEFENDANTS have willfully failed to pay
8 accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
9 accordance with California Labor Code §§ 201 and 202.

10 47. As a result, PLAINTIFF and other aggrieved employees are entitled to all
11 available statutory penalties, including the waiting time penalties provided in California Labor
12 Code § 203, together with interest thereon, as well as other available remedies.

13 48. As a proximate result of DEFENDANTS' unlawful actions and omissions,
14 PLAINTIFF and other aggrieved employees have been deprived of compensation in an amount
15 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
16 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant
17 to California Labor Code §§ 1194 and 2699.

18 **Failure to Provide Accurate Itemized Wage Statements**

19 **[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

20 49. During the PENALTY PERIOD, DEFENDANTS routinely failed to provide
21 PLAINTIFF and other aggrieved employees with timely, accurate, and itemized wage statements
22 in writing showing each employee's gross wages earned, total hours worked, all deductions made,
23 net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
24 other aggrieved employees, and all applicable hourly rates in effect during each pay period and
25 the corresponding number of hours worked at each hourly rate, in violation of California Labor
26 Code § 226 and IWC Wage Order No. 9-2001, § 7.

1 50. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally
2 failed to provide PLAINTIFF and other aggrieved employees with timely, accurate, and itemized
3 wage statements in accordance with California Labor Code § 226(a).

4 51. During the PENALTY PERIOD, PLAINTIFF and other aggrieved employees
5 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized
6 wage statements as PLAINTIFF and other aggrieved employees could not promptly and easily
7 determine from the wage statement alone one or more of the following: the gross wages earned,
8 the total hours worked, all deductions made, the net wages earned, the name and address of the
9 legal entity or entities employing PLAINTIFF and other aggrieved employees, and/or all
10 applicable hourly rates in effect during each pay period and the corresponding number of hours
11 worked at each hourly rate.

12 52. As a proximate result of DEFENDANTS' unlawful actions and omissions,
13 PLAINTIFF and other aggrieved employees have been damaged in an amount according to proof
14 at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
15 other aggrieved employees are entitled to all available statutory penalties, including but not
16 limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
17 award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
18 provided in California Labor Code § 226(e), as well as other available remedies.

19 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

20 **[Cal. Labor Code § 2802]**

21 53. California Labor Code § 2802(a) requires an employer to indemnify an employee
22 for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties, or of his or her obedience to the directions of the employer.

24 54. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
25 to indemnify PLAINTIFF and other aggrieved employees for all business expenses and/or losses
26 incurred in direct consequence of the discharge of their duties while working under the direction
27 of DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and
28 other employment-related expenses, in violation of California Labor Code § 2802.

55. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and other aggrieved employees have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, PLAINTIFF and other aggrieved employees are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

UNLAWFUL WAGE DEDUCTIONS

[Cal. Labor Code §§ 221, 223, 400-410; IWC Wage Order No. 9-2001, § 8]

56. California Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

57. California Labor Code § 222.5 provides: “No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.”

58. California Labor Code § 223 provides: “Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

59. California Labor Code §§ 400-410 provide the limited circumstances under which an employer can exact a cash bond from its employees and are designed to protect employees from taking or misappropriating employee funds held by the employer in trust.

60. IWC Wage Order No. 9-2001, § 8 provides that the only circumstance under which an employer can make a deduction from an employee's wage due to cash shortage,

breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

61. These and related statutes reflect California's fundamental and substantial public policy protecting employee wages. Specifically, these and related statutes are designed to prohibit and prevent employers from using deductions or other similar practices to drive down the wage scale, indirectly paying employees less than the stated wage, subjecting employees to unanticipated or unpredicted reductions in their wages, making employees the insurers of their employer's business losses, or otherwise passing the ordinary business losses of the employer onto the employee.

62. During the PENALTY PERIOD, DEFENDANTS routinely made unlawful deductions from the compensation paid to the PLAINTIFF and other aggrieved employees for ordinary business expenses and losses without a showing that the expenses and/or losses were due to the PLAINTIFF's and other aggrieved employees' dishonest or willful act, or to the gross negligence of the PLAINTIFF and other aggrieved employees in violation of California Labor Code §§ 221, 222.5, 223, 400-410 and IWC Wage Order No. 9-2001, § 8.

63. As a result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and other aggrieved employees have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and other aggrieved employees are entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT

[Cal. Labor Code §§ 2698- 2699.5]

(Against All DEFENDANTS)

64. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

1 65. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
2 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
3 current and former employees of DEFENDANTS pursuant to the procedures specified in
4 California Labor Code § 2699.3, because PLAINTIFF and other aggrieved employees were
5 employed by DEFENDANTS and one or more of the alleged violations of the California Labor
6 Code were committed against PLAINTIFF during the PENALTY PERIOD.

7 66. PLAINTIFF seeks to recover civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
9 Cal.4th 969. Thus, class certification is not required.

10 67. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
11 Labor Code §§ 2698–2699.5, PLAINTIFF seeks to recover civil penalties, including but not
12 limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558, 1174.5, 1197.1, and
13 IWC Wage Order No. 9-2001, § 20, from DEFENDANTS in a representative action for the
14 violations set forth above, including but not limited to:

- 15 a. Failing to properly compensate PLAINTIFF and other current and former
16 employees for missed meal periods in violation of California Labor Code §§
17 226.7, 510, 512, 1194, 1197 and IWC Wage Order No. 9;
- 18 b. Failing to properly compensate PLAINTIFF and other current and former
19 employees for missed rest periods in violation of California Labor Code §§
20 226.7 and 512 and IWC Wage Order No. 9;
- 21 c. Failing to properly compensate PLAINTIFF and other current and former
22 employees for all overtime hours worked in violation of California Labor Code
23 §§ 226, 510, 1194, 1197 and IWC Wage Order No. 9;
- 24 d. Failing to compensate PLAINTIFF and other current and former
25 employees at a wage rate at least equal to the California minimum wage for
26 each hour worked in violation of California Labor Code §§ 226, 510, 1182.12,
27 1194, 1197 and IWC Wage Order No. 9;
- 28 e. Failing to maintain required records in violation of California Labor Code

1 §§ 1174-1174.5;

- 2 f. Failing to provide PLAINTIFF and other current and former employees with
3 accurate itemized wage statements that set forth the wage rate paid for each hour
4 worked, in violation of California Labor Code § 226;
- 5 g. Failing to properly compensate PLAINTIFF and other current and former
6 employees for all wages when due in violation of California Labor Code §§
7 201, 202, and 204;
- 8 h. Failing to indemnify PLAINTIFF and other current and former employees
9 for necessary expenditures incurred in discharge of duties in violation of
10 California Labor Code § 2802; and
- 11 i. Unlawfully deducting, from the compensation paid to the PLAINTIFF and
12 other aggrieved employees, ordinary business expenses and losses without a
13 showing that the expenses and/or losses were due to the PLAINTIFF's and
14 other aggrieved employees' dishonest or willful act, or to the gross negligence
15 of the PLAINTIFF and other aggrieved employees in violation of California
16 Labor Code §§ 221, 223, 400-410 and IWC Wage Order No. 4-2001, § 9.

17 68. These penalties are in addition to any other relief available under the Labor Code.
18 Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not
19 specifically provided, the following civil penalties are established: one hundred dollars (\$100) for
20 each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
21 each aggrieved employee per pay period for each subsequent violation. PLAINTIFF seeks such civil
22 penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for
23 which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201,
24 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

25 69. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
26 August 4, 2020 by online filing to the California Labor and Workforce Development Agency
27 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California
28 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories

1 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
2 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

3 70. Therefore, PLAINTIFF has complied with all of the requirements set forth in
4 California Labor Code § 2699.3 to commence a representative action under PAGA.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons
7 similarly situated, by their attorneys, respectfully pray for relief against DEFENDANTS and
8 DOES 1 through 100, inclusive, and each of them, as follows:

9 1. For civil penalties according to proof, including but not limited to the amount of
10 any unpaid wages of PLAINTIFF and other aggrieved employees and all penalties authorized by
11 the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

12 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
13 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest

14 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
15 any other applicable provisions providing for attorney's fees and costs; and

16 4. For such other and further relief that the Court may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

19 DATED: January 12, 2021

20 Respectfully submitted,

21 **THE KICK LAW FIRM, APC**

22
23 By: 

24 Taras Kick

25 Daniel J. Bass

26 Roy K. Suh

27 Attorneys for Plaintiff COREY J. DEVINE,
28 individually, and on behalf of all others
similarly situated

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 815 Moraga Drive Los Angeles, CA 90049.

On January 12, 2021, I served the following document or documents:

FIRST AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004



BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on an agreement of the parties to accept service by e-mail or electronic transmission and/or emergency order #12 authorizing electronic service during the COVID-19 pandemic, I caused the documents to be sent to the person[s] at the e-mail addresses below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

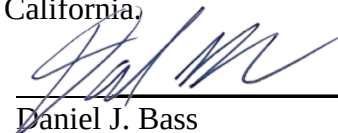
SEYFARTH SHAW LLP
Gerald L. Maatman (IL 6181016) (pro hac vice application to follow)
gmaatman@seyfarth.com
Jennifer A. Riley (IL 6272366) (pro hac vice application to follow)
jriley@seyfarth.com
Alexandra S. Oxyer (IL 6324449) (pro hac vice application to follow)
aoxyer@seyfarth.com
233 S. Wacker Drive, 80th Floor
Chicago, Illinois 60606
Telephone: (312) 460-5000
Facsimile: (312) 460-7000

Attorneys for Defendant
CAPSTONE LOGISTICS, LLC

SEYFARTH SHAW LLP
Justin T. Curley (SBN 233287)
jcurley@seyfarth.com
Megha J. Charalambides (SBN 310892)
mcharalambides@seyfarth.com
560 Mission Street, 31st Floor
San Francisco, California 94105
Telephone: (415) 397-2823
Facsimile: (415) 397-8549

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2021 at Los Angeles, California,


Daniel J. Bass