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ALAMEDA COUNTY

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THE SUPERIOR COURT
By Joanne Downie, Deputy

CASE NUMBER:

RG21100895

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13 *of California and Aggrieved Employees*

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

12 ANGEL BARBA, on behalf of the State of
13 California,

14 *Plaintiff,*

15 v.

16 CAPSTONE LOGISTICS, LLC, d/b/a LOAD
17 DELIVERED LOGISTICS, LLC, HOME DEPOT
18 USA, INC., and DOES 1-100, inclusive,

19 *Defendants.*

Case No.: _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

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COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(a) AND (f) OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL

Angel Barba v. Capstone Logistics, LLC, et al.

1 Plaintiff Angel Barba, on behalf of the State of California and Aggrieved Employees
2 (“Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant Capstone Logistics, LLC
5 (“Capstone Logistics”) and Defendant Home Depot USA, Inc. (“Home Depot”) (collectively
6 “Defendants”) on behalf of the State of California to collect statutory penalties as a result of
7 Defendants systematic violations of California labor law with respect to Defendants non-exempt,
8 hourly employees in California (“Aggrieved Employees”).

9 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
10 warehouse associates and other workers with similar job duties who have worked for Defendants in
11 California.¹

12 3. Upon information and belief, Defendant Capstone Logistics, LLC is part of the
13 transportation services sector industry. Capstone has over 14,500 total employees across all its
14 locations and generate \$182.73 million in sales. There are twenty companies in the Capstone
15 Logistics, LLC corporate company. Capstone operates facilities across the United States with
16 extensive operations throughout California. Capstone Logistics, LLC d/b/a Load Delivered Logistics,
17 LLC in California.

18 4. Upon information and belief, Defendant Home Depot USA, Inc. is part of the wholesale
19 sector industry. Home Depot is the world’s largest home improvement chain and operates stores
20 across the United States. Home Depot has over 300,000 total employees across 2,300 locations in
21 North America and generate \$51,22 billion in sales. There are 2629 companies in the Home Depot,
22 USA, Inc. corporate family. Home Depot operates facilities and stores across the United States with
23 extensive operations in California.

24 5. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
25 and practices of (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
26 and (2) engaging in unfair business practices.

27 ¹ Although Plaintiff is a former employee, Aggrieved Employees include current and former
28 employees. For ease of discussion, the allegations herein are made in the present tense.

6. Defendants maintains a longstanding policy and/or practice of failing to properly compensate warehouse workers for work related tasks performed while “off-the-clock,” including but not limited to directing Plaintiff and Aggrieved Employees to wait in line and go through security checks before the beginning and after the end of every shift, *i.e.*, before clocking in and after clocking out.

7. Plaintiff and Aggrieved Employees perform off-the-clock work before and after paid shifts for the benefit of Defendants.

8. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been denied proper payment for all hours worked for the time spent off-the-clock, *i.e.*, in security checks lines. Defendants have failed to pay for any of this time worked in violation of the California Labor Code.

9. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

10. Plaintiff and Aggrieved Employees are current and former non-exempt, warehouse associates and other workers with similar job duties employed by Defendants in California. Defendants employ and/or employed Plaintiff and Aggrieved Employees.

11. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California.

12. Plaintiff was employed as a warehouse associate by Defendants from approximately 2014 until September 2020. Plaintiff worked at Defendants' warehouse located in Mira Loma, California.

13. Defendant Capstone Logistics, LLC is an Illinois limited liability company headquartered in Peachtree Corners, Georgia, and is licensed to do business in California. Capstone Logistics is registered in California and does business in California as Load Delivered Logistics, LLC. Capstone Logistics employs and/or employed warehouse workers, including Plaintiff and Aggrieved

1 Employees, in the State of California. Capstone Logistics may be served with process by serving its
2 registered agent, Cogency Global, Inc. 1325 J Street, Suite 1550, Sacramento, California 95814.

3 14. Defendant Home Depot USA, Inc. is a Delaware corporation headquartered in Atlanta,
4 Georgia, and is licensed to do business in California. Home Depot employs and/or employed
5 warehouse associates and other workers with similar job duties, including Plaintiff and Aggrieved
6 Employees, in the State of California. Home Depot may be served with process by serving its
7 registered agent, CSC – Lawyers Incorporated Services, 2710 Gateway Oaks Drive, Suite 150N,
8 Sacramento, California 95833.

9 15. Plaintiff is informed, believes, and thereon alleges that Defendants operates warehouses
10 located throughout California, including in Alameda County. Plaintiff is informed, believes, and
11 thereon alleges that Defendants employ non-exempt employees, including non-exempt warehouse
12 associates and other workers with similar job duties, throughout California, including in Alameda
13 County.

14 16. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise
15 control over Plaintiff and Aggrieved Employees with respect to their employment.

16 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
18 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
19 named Defendants is responsible in some manner for the occurrences and violations as herein alleged.
20 Plaintiff will amend this Complaint to show their true names and capacities when they have been
21 ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

22 18. At all relevant times, Defendants have done business under the laws of California, have
23 had places of business in California, including in this judicial district, and have employed Aggrieved
24 Employees in this judicial district. Defendants are “persons” as defined in Labor Code § 18 and
25 Business and Professions Code § 17201. Defendants are also “employers” as that term is used in the
26 Labor Code and IWC Wage Orders.

27 19. Defendants employ Plaintiff and Aggrieved Employees, because Defendants, directly
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1 or indirectly, control the employment terms, pay practices, timekeeping practices, and daily work of
2 Plaintiff and Class members.

3 **JURISDICTION AND VENUE**

4 20. Venue is proper in this County pursuant to Code of Civil Procedure §§ 393(a) and/or
5 395.5. Defendants conduct business and employ Aggrieved Employees in this County. A substantial
6 portion of the events giving rise to these causes of action occurred in this County.

7 21. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA.
8 The Court also has jurisdiction over Defendants because it is a company authorized to do business in
9 the State of California, and because Defendants in fact does do business and employ workers in the
10 State of California.

11 **FACTUAL ALLEGATIONS**

12 22. Defendant Capstone Logistics, LLC d/b/a Load Delivered, LLC is part of the
13 transportation services sector industry and operates facilities, including warehouses, across the United
14 States and throughout California. Defendant operates numerous warehouses in California at which it
15 employs and/or employed hundreds of Aggrieved Employees, including Plaintiff.

16 23. Defendant Home Depot USA, Inc. is the world's largest home improvement chain and
17 operates stores across the United States and throughout California. Defendant operates numerous
18 stores and warehouses in California at which it employs and/or employed thousands of Aggrieved
19 Employees, including Plaintiff.

20 24. Plaintiff is a former non-exempt warehouse associate and was compensated at an hourly
21 rate of \$15.50. Plaintiff worked at one of Defendants' warehouse located in Mira Loma, California.
22 Plaintiff was employed by Defendants from approximately the year 2014 through September 2020.

23 25. Plaintiff is informed, believes, and thereon alleges that Aggrieved Employees were and
24 are employed by Defendants throughout California, including in this County, and perform work
25 materially similar to Plaintiff. Defendants pay and/or paid Aggrieved Employees, including Plaintiff,
26 on an hourly rate basis.

27 26. Plaintiff is informed, believes, and thereon alleges that Defendants' policies and
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1 practices have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of
2 warehouses and stores' location in California.

3 27. Aggrieved Employees are required to follow and abide by Defendants' common work,
4 time, and pay policies and procedures in the performance of their jobs and duties.

5 28. At the end of each pay period, Aggrieved Employees receive wages from Defendants
6 that are determined by common systems and methods that Defendants selects and controls.

7 29. As a matter of policy and/or practice, Defendants routinely fail to compensate Plaintiff
8 and Aggrieved Employees for all hours worked. Plaintiff and Aggrieved Employees are not permitted
9 to log the actual number of hours they actually work each week. Plaintiff and Aggrieved Employees
10 are not compensated for all time worked and spent under the control and supervision of Defendants,
11 *i.e.*, time spent for the benefit of Defendants.

12 30. For instance, Plaintiff and Aggrieved Employees perform duties while off-the-clock
13 including, but not limited to, waiting in line and going through security checks before the beginning
14 and after the end of each shift, *i.e.*, before clocking in and after clocking out. This time goes
15 unrecorded and uncompensated, even though it should be compensated.

16 31. Plaintiff is informed, believes, and thereon alleges that Defendants are well aware that
17 their policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time
18 worked. Thus, Defendants' denial of wages to Plaintiff and Aggrieved Employees is and/or was
19 deliberate and willful.

20 32. Plaintiff is informed, believes, and thereon alleges that Defendants' unlawful conduct
21 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout
22 Defendants' operations in California.

23 33. Defendants' conduct was willful, carried out in bad faith, and triggers significant civil
24 penalties in an amount to be determined at trial.

25 **FIRST CAUSE OF ACTION**
26 **Penalties Pursuant to Labor Code § 2699(a)**
27 **(On Behalf of the State of California and Aggrieved Employees)**

28 34. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth

herein.

35. Labor Code § 2699(a) provides:

“Notwithstanding any other provision of 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, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.”

36. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

37. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each Defendants’ violations of Labor Code § 225.5, 226.3, 256, and any other violation alleged herein that carries penalties under Labor Code § 2699(a).

38. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

39. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699.

40. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

41. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

42. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

1 43. Labor Code § 2699(f) provides:

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

9 44. Labor Code § 200 defines wages as “all amounts for labor performed by employees of
10 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
11 commission basis or method of calculation.”

12 45. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
13 employment are due and payable twice during each calendar month....”

14 46. IWC Wage Orders 1-2001(2)(G) and 4-2001(2)(K) define hours worked as “the time
15 during which an employee is subject to the control of an employer and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.”

17 47. To the extent than any violation alleged herein does not carry penalties under Labor
18 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
19 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
20 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff
21 and Aggrieved Employees for violations of Labor Code provisions including, but not limited, to,
22 Labor Code § 204, IWC Wage Orders 1-2001 and 4-2001, and any other violation alleged herein
23 does not carry penalties under Labor Code § 2699(a).

24 48. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
25 notice of his intention to file this claim. Sixty-five calendar days have passed without notice from
26 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
27 compliance with § 2699.3(a).

28 49. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
 Employees, and himself as set forth in Labor Code § 2699(g)(1).

 50. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for

1 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
2 award of attorneys' fees and costs as set forth below.

3 51. Wherefore, Plaintiff requests relief as hereinafter provided.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 1. For the Court to declare, adjudge, and decree that Defendants have violated the
7 California Labor Code as alleged herein;
8 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
9 civil penalties provided under the PAGA;
10 3. For interest on penalties awarded as provided by applicable law;
11 4. For an award of reasonable attorneys' fees;
12 5. For all costs of suit; and
13 6. For such other and further relief as this Court deems just and proper.

14
15 Respectfully submitted,

16 Date: June 3, 2021

17 

18 Carolyn H. Cottrell
19 Ori Edelstein
20 Philippe M. Gaudard
21 SCHNEIDER WALLACE
22 COTTRELL KONECKY LLP

23
24 *Attorneys for Plaintiff, on behalf of the State of*
25 *California and Aggrieved Employees*
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: June 3, 2021

6 

7 Carolyn H. Cottrell
8 Ori Edelstein
9 Philippe M. Gaudard
10 SCHNEIDER WALLACE
11 COTTRELL KONECKY LLP

12 *Attorneys for Plaintiff, on behalf of the State of*
13 *California and Aggrieved Employees*