

1 Thomas E. Daugherty, Esq., SBN 269063
KLINEDINST PC
2 501 West Broadway, Suite 600
San Diego, California 92101
3 (619) 239-8131 / FAX (619) 238-8707
tdaugherty@klinedinstlaw.com

4 Attorney for Plaintiff SAMUEL RUBIO
5
6
7

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/15/2022 at 01:30:17 PM
Clerk of the Superior Court
By Armando Villasenor, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL**
10

11 SAMUEL RUBIO, an individual,

12 Plaintiff,

13 v.

14 DIAKON LOGISTICS, INC., a Delaware
corporation, and DOES 1 to 50,

15 Defendants.
16
17

Case No. 37-2022-00027959-CU-OE-CTL

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (CAL. LAB. CODE §§ 2698,
et seq.)**

IMAGED FILE

18 Plaintiff SAMUEL RUBIO ("Plaintiff"), individually and on behalf of the State of
19 California and all other aggrieved employees, hereby brings this representative action Complaint
20 pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code Sections
21 2698, *et seq.*, against Defendants DIAKON LOGISTICS, INC. ("DIAKON"), a Delaware
22 Corporation; and DOES 1 through 50 inclusive (collectively, "Defendants"), and allege as follows:

23 **INTRODUCTION**

24 1. This representative PAGA action, pursuant to Labor Code Sections 2698, *et seq.*, is
25 brought by Plaintiff on behalf of himself, and all current and former employees of Defendants
26 employed in California during the PAGA Period (collectively the "Aggrieved Employees"), and
27 the State of California. Defendants violated various sections of the California Labor Code with
28 respect to Plaintiff RUBIO's employment. Accordingly, on behalf of himself, all other current

1 and former aggrieved employees, and the State of California, he alleges that Defendants violated
2 California Labor Code section 245 *et seq.* for failing to provide earned sick leave and
3 supplemental COVID paid sick leave as required by the Healthy Workplaces, Healthy Families
4 Act of 2014, as amended.

5 **JURISDICTION AND VENUE**

6 2. Plaintiff SAMUEL RUBIO is and was at all times relevant, a resident of San Diego
7 County.

8 3. Defendant DIAKON, is and was at all times relevant, a Delaware Corporation,
9 conducting business in San Diego County.

10 4. This Court has jurisdiction over all causes of action asserted herein pursuant to the
11 California Constitution, Article VI, Section 10, which grants the Superior Court original
12 jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise
13 under California law for which Plaintiff seeks relief authorized by California law. Further, this is
14 a representative PAGA action and the monetary damages, restitution, penalties, and other amounts
15 sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be
16 established according to proof at trial.

17 5. This Court has jurisdiction over all Defendants because each Defendant is either a
18 citizen of California, a corporation or association authorized to do business in California, a
19 corporation or association that does sufficient business in California, has sufficient minimum
20 contacts with California, and/or intentionally avails itself of the laws and markets of California
21 through the promotion, sale, marketing and distribution of its products and/or services in
22 California to render the exercise of jurisdiction by the California courts permissible.

23 6. Venue in San Diego County is proper under California *Business & Professions*
24 Code section 17203 and California Code of *Civil Procedure* section 395.5 because a substantial
25 part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
26 Defendants had and have ongoing projects in this County, Defendants conduct substantial business
27 in this County, Defendants' liability arose in this County, and/or Defendants reside, transact

28 ///

1 business, maintain offices, and/or have an agent or agents in this county. The relief requested is
2 within the jurisdiction of this Court.

3 **THE PARTIES**

4 7. Plaintiff SAMUEL RUBIO is an individual who was previously employed by
5 DIAKON from approximately December 2005 to April 2021. Over the years, Plaintiff RUBIO
6 worked for DIAKON in various positions, including assistant manager, operations manager, and
7 senior client manager. His primary job duties included supervising and managing delivery drivers,
8 and making sure that the customers' expectations were met. He supervised DIAKON's daily
9 operations, including daily stand up meetings, load outs, on-time arrivals, ensured that driver
10 teams checked their products before loading and made sure they were fully loaded, and maintained
11 a professional relationship with DIAKON's clients and assisted them on any projects they
12 requested. He was also responsible for ensuring that all necessary reports were correct, accurate,
13 and on-time. These included EZ Labor, KPI, Inventory, IHD, Safety Minutes, Monthly Ops
14 Report, P+L reviews, weekly settlements, and Workbook reports. He was also charged with
15 recruiting duties, and was constantly on the look-out for good candidates for DIAKON.

16 8. Defendant DIAKON is a full-service third-party logistics provider which offers
17 logistics management services for its client's warehousing and white glove delivery needs for big
18 and bulky items, like appliances, electronics, home furnishings, bedding, and mattresses.

19 9. Pursuant to California Code of Civil Procedure section 474, the true names and
20 capacities of the Defendants DOES 1 through 50, inclusive, are unknown to Plaintiff who
21 therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and
22 thereon alleges, that each of the Defendants designated herein as a DOE is responsible in some
23 manner for the events and happenings herein referred to and caused injuries and damages
24 proximately thereby to Plaintiff as herein alleged. Any subsequent reference in this Complaint to
25 "DIAKON", "Defendants" or "Defendant" should be understood to include each expressly named
26 Defendants and all "DOE" Defendants. Plaintiff will seek leave of this Court to amend the
27 Complaint to set forth the true names and capacities of the fictitiously named Defendants when
28 their true identities and capacities become known to Plaintiff.

1 10. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
2 herein, each of the Defendants was the agent, servant and employee of the remaining co-
3 Defendants, and as such was acting within the time, place, purpose, and scope of said employment
4 and agency and each Defendant has ratified, authorized, and approved the acts of his/her/its
5 agents.

6 11. All Defendants violated wage and hour protections afforded under the California
7 Labor Code, the California Industrial Wage Commission Wage Order(s), and other applicable
8 State and local laws and regulations, as described in further detail below. All Defendants were
9 responsible for the events and damages alleged herein, including on the following bases: (a)
10 Defendants committed the acts alleged; (b) at all relevant times, one or more of the Defendants
11 was the agent or employee, and/or acted under the control or supervision of, one or more of the
12 remaining Defendants and, in doing the acts alleged, acted within the course and scope of such
13 agency and employment and/or is or are otherwise liable for Plaintiff's damages; (c) at all relevant
14 times, there existed a unity of ownership and interest between two or more of the Defendants such
15 that any individuality and separateness between those Defendants has ceased, and defendants are
16 the alter egos of one another. Defendants exercised domination and control over one another to
17 such an extent that any individuality or separateness of Defendants does not, and at all times
18 herein mentioned did not, exist. Adherence to the fiction of the separate existence of Defendants
19 would permit abuse of the corporate privilege and would sanction fraud and promote injustice. All
20 actions of all Defendants were taken by employees, supervisors, executives, officers, and directors
21 during employment with all Defendants, were taken on behalf of all Defendants, and were
22 engaged in, authorized, ratified, and approved of by all other Defendants.

23 **GENERAL ALLEGATIONS**

24 12. At all relevant times herein, Defendants employed Plaintiff and other persons as
25 non-exempt and/or exempt employees.

26 ///

27 ///

28 ///

1 13. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known they had a duty to compensate Plaintiff and Aggrieved Employees, and
3 Defendants had the financial ability to pay such compensation but willfully, knowingly and
4 intentionally failed to do so.

5 **DEFENDANTS FAILED TO PROVIDE PAID SICK LEAVE**

6 14. DIAKON's ongoing and systematic failure to provide sick leave benefits to its
7 aggrieved employees violates California Labor Code sections 246 and 248.2, as set forth herein.

8 15. Since 2015, under California's Healthy Workplaces, Healthy Families Act of 2014,
9 (the "Act") California employers have been required to provide its employees (exempt and non-
10 exempt alike) who have worked in California for 30 or more days from the commencement of
11 employment with paid sick days, to be accrued at no less than one hour of paid sick leave for
12 every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid
13 sick leave (or equivalent paid leave or paid time off) by the 120th calendar day in each year of the
14 employee's employment, for the reasons described and under the conditions described under the
15 Act.

16 16. DIAKON violated California Labor Code section 246, by failing to provide
17 Plaintiff RUBIO, and all aggrieved employees with the mandated accrual rate of paid sick leave,
18 and by failing to carry-over paid sick leave from year to year while not providing a lump sum
19 accrual of the full required amount at the beginning of the next benefit year. Additionally,
20 DIAKON's violative paid sick leave plan failed to accurately report the available balance of
21 accrued paid sick leave on each of Plaintiff RUBIO's wage statements, or in a separate writing.
22 Consequently, DIAKON violated the statutory rights of Plaintiff RUBIO and all aggrieved
23 employees, and prevented them from being aware of and able to use their full amount of paid sick
24 leave in the time required by the statute.

25 17. In violation of Labor Code section 246, subparagraphs (b)(1), (3), and (4); (d), and
26 (i), DIAKON did provide some basic paid sick leave to its employees, but it accrued at a much
27 lower and slower rate than is required by California law, it did not carry-over from year to year
28 and DIAKON did not otherwise satisfy the carry-over requirement by providing the full amount of

1 paid sick leave (24 hours) to its employees at the beginning of each year of employment, and
2 DIAKON failed to accurately report to its employees the amount of paid sick leave available for
3 use on either the employee's itemized wage statement described in Labor Code section 226 or in a
4 separate writing provided on the designated pay date with the employee's payment of wages.

5 18. California Labor Code section 246(b)(1) requires that an employee shall accrue
6 paid sick days at the rate of not less than one hour per every 30 hours worked (0.03 hours of paid
7 sick leave per hour worked), or alternatively, under California Labor Code section 246(b)(3) and
8 (4), such that an employee has accrued no less than 24 hours of accrued sick leave or paid time off
9 by the 120th calendar day of employment or each calendar year, or in each 12-month period.
10 Under the requirements of section 246(b)(1), an employee working 40 hours a week would accrue
11 1.33 hours paid sick leave per week. For an 80 hour pay period, the employee should accrue 2.66
12 hours of paid sick leave per 80 hours of work.

13 19. In violation of these requirements, while employed by DIAKON, Plaintiff
14 RUBIO's wage statements show that he accrued paid sick leave at the rate of 0.01 hours of paid
15 sick leave per hour worked, or 0.93 hours of paid sick leave per pay period, covering 80 hours of
16 work. Furthermore, in violation of section 246(b)(3) and (4), instead of accruing not less than 24
17 hours of paid sick leave by the employee's 120th calendar day of employment or in each 12-month
18 period, under DIAKON's non-compliant accrual plan, Plaintiff RUBIO only accrued
19 approximately 7.97 hours of paid sick leave by his 120th calendar day of employment in the
20 benefit year, well short of the full amount of 24 hours required. In other words, while employed
21 by DIAKON, Plaintiff RUBIO accrued paid sick leave at approximately 1/3 the required rate.
22 This violated his rights as an employee, and DIAKON wrongfully deprived him of the protections
23 required under Labor Code section 246.

24 20. California Labor Code section 246(d) requires that accrued paid sick days shall
25 carry over to the following year of employment, or that no accrual or carryover is required if the
26 full amount of leave (three days or 24 hours) is received at the beginning of each year of
27 employment, calendar year, or 12-month period. DIAKON's violative accrual method did not
28 carry over from year to year, and did not provide a lump-sum accrual at the beginning of each

1 benefit year. For example, in 2020, for the pay period of 11/29/2020 through 12/12/2020, Plaintiff
2 RUBIO had accrued 23.25 hours of available paid sick leave. There is no paid sick leave evident
3 on his wage statement for his next pay period, from 12/13/2020 through 12/26/2020, and there is
4 no indication that Plaintiff RUBIO used any of his accrued paid sick leave in that pay period. In
5 the next pay period, from 12/27/2020 through 1/9/2021, the start of the next benefit year, his wage
6 statement shows the balance of 0.93 hours of paid sick leave for 80 hours of work in the pay
7 period. So, DIAKON did not carry-over the balance accrued in the prior year, and it did not
8 provide a lump-sum accrual of 24 hours at the beginning of the next benefit year. The same
9 pattern occurred the year before, with no accrued paid sick leave roll-over from 2019 to 2020.

10 21. California Labor Code section 246(i) requires that California employers shall
11 provide each employee with written report that sets forth the amount of paid sick leave available
12 for use on either the employee's itemized wage statement described in Section 226 or in a separate
13 writing provided on the designated pay date with the employee's payment of wages. Under the
14 law, Plaintiff RUBIO and his fellow aggrieved employees accrued at least 2.66 hours of paid sick
15 leave per pay period for 80 hours of work. DIAKON's violative accrual plan falsely reported that
16 only 0.93 hours of paid sick leave accrued each pay period on their wage statements, in violation
17 of section 246(i).

18 22. Effective March 19, 2021, DIAKON violated the rights of Plaintiff RUBIO and all
19 aggrieved employees by failing to provide any COVID-19 supplemental paid sick leave under
20 Labor Code section 248.2, and by failing to report to Plaintiff RUBIO and all aggrieved
21 employees the amount of COVID-19 supplemental paid sick leave available to them, separately
22 from their regular paid sick leave or other paid time off, on their wage statements or other
23 document every pay day, as required by California law.

24 23. Labor Code section 248.2(b) requires that employers such as DIAKON provide up
25 to 80 hours of COVID-19 supplemental paid sick leave to its employees who are/were unable to
26 work or telework due to any of the following reasons:

27 (A) The covered employee is subject to a quarantine or isolation period related to
28 COVID-19 as defined by an order or guidelines of the State Department of Public
Health, the federal Centers for Disease Control and Prevention, or a local health

officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

(G) The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

24. DIAKON violated Labor Code section 248.2(b), because it did make any available COVID-19 supplemental paid sick leave to Plaintiff RUBIO or any other aggrieved employee, above and beyond any other paid leave they had accrued.

25. Under Cal Lab Code § 248.2(d)(2), for purposes of the enforcement of the payroll reporting requirements of Labor Code section 246(i) as it relates to the COVID-19 supplemental paid sick leave required under section 248.2, COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days. DIAKON violated this section, because it did not report any available COVID-19 supplemental paid sick leave to Plaintiff RUBIO or any other aggrieved employee.

26. For each and every pay period that there was failure to accrue paid sick leave at the required rate, that there was no roll-over from year to year, and for which there was no accurate report of the available paid sick leave for each employee, DIAKON violated Labor Code § 246. For each and every time that a DIAKON employee called in sick but did not receive paid time off, or wanted to call in sick but did not do so because he or she would not be paid for the necessary

1 sick days, DIAKON violated Labor Code § 246. DIAKON is liable for civil penalties under
2 PAGA and Labor Code section 248.5 for these violations of the Healthy Workplaces, Healthy
3 Families Act of 2014.

4 27. Similarly, for each and every pay period that there was failure to provide COVID-
5 19 supplemental paid sick leave, or report the available COVID-19 supplemental paid sick leave
6 to Plaintiff RUBIO and all other aggrieved employee in writing, DIAKON violated Labor Code §
7 248.2. DIAKON is liable for civil penalties under PAGA and Labor Code section 248.5 for these
8 violations of the Healthy Workplaces, Healthy Families Act of 2014.

9 28. Plaintiff RUBIO and other aggrieved employees are therefore entitled to recover
10 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or
11 2699(f)-(g).

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

14 **(CAL. LAB. CODE §§ 2698, *ET SEQ.*)**

15 **(Against All Defendants)**

16 29. Plaintiff incorporates by reference each and all of the allegations contained in
17 paragraphs 1 through 28, inclusive, of the Complaint as though fully set forth herein.

18 30. Plaintiff is an aggrieved employee under PAGA because he was employed by
19 Defendant during the applicable statutory period and suffered one or more of the Labor Code
20 violations set forth in this complaint.

21 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
22 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
23 (LWDA) or any of its departments, divisions, commissions, boards, agencies or employees for
24 violation of the code may, as an alternative, can be recovered through a civil action brought by an
25 aggrieved employee on behalf of himself or herself and other current or former employees
26 pursuant to the procedures specified in Labor Code Section 2699.3.

27 32. Under Labor Code Section 2699.3(a), a plaintiff may bring a cause of action under
28 PAGA only after giving the LWDA and the employer notice of the Labor Code Sections alleged

1 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
2 or after 65 days have passed without notice from the LWDA.

3 33. On August 13, 2021, Plaintiff gave written notice of the specified provisions
4 alleged to have been violated, including the facts and theories to support the alleged violations, as
5 required by Labor Code Section 2699.3. This written notice was provided via certified mail to
6 Defendants and to the LWDA by electronically filing the notice via the Department of Industrial
7 Relations' website. A true and correct copy of this written notice, and the certified mail receipt
8 showing its delivery to Defendants' agent for service of process is attached as **Exhibit 1**.

9 34. On September 14, 2021, Defendants submitted to the LWDA and Plaintiff's
10 counsel an Employer Response and Cure Notice, pursuant to Cal. Labor Code § 2699.3(c)(2)(A),
11 purportedly attempting to cure the PAGA violations alleged in Plaintiff's PAGA Notice Letter. A
12 true and correct copy of this letter is attached as **Exhibit 2**.

13 35. The parties entered into a tolling agreement effective December 13, 2021, which
14 tolled all applicable statutes of limitation, including the deadline to file a PAGA complaint, for a
15 period of six months.

16 36. On June 21, 2022, Plaintiff disputed Defendants' attempt to cure the alleged PAGA
17 violations, by submitting a Cure-Dispute Letter to the LWDA and Defendants' counsel. A true
18 and correct copy of this Cure-Dispute Letter is attached as **Exhibit 3**.

19 37. Later that same day, on June 21, 2022, a Labor Commissioner attorney responded
20 to both parties on behalf of the LWDA, and requested additional responses from both parties,
21 including additional evidence, legal authority, and argument, within the 17-day time frame
22 permitted under Labor Code section 2699.3(c)(2). Both parties timely complied.

23 38. Cal Lab Code § 2699.3(c)(3) provides, "If the agency determines that the alleged
24 violation has not been cured or if the agency fails to provide timely or any notification, the
25 employee may proceed with the civil action pursuant to Section 2699." Here, the agency notified
26 the parties that it determined that Defendants failed to cure the alleged PAGA violations in a
27 Decision on Cure Dispute Letter dated July 8, 2022. A true and correct copy of this Decision on
28 Cure Dispute Letter is attached as **Exhibit 4**. Accordingly, Plaintiff has exhausted the procedural

1 requirements under Labor Code Section 2699.3 as to Defendants and is therefore able to pursue a
2 claims for penalties on behalf of himself, all other Aggrieved Employees, and the State of
3 California, under PAGA.

4 39. As set forth in detail above, and incorporated herein by reference, Plaintiff seeks
5 civil penalties, and all attendant attorney's fees, costs, and interest thereon, pursuant to Labor Code
6 sections 2699 *et seq.*, for Defendants' violation of Cal. Labor Code §§ 246, 248.2, and 248.5 *et*
7 *seq.*, for failure to provide and/or report earned sick leave and COVID supplemental paid sick
8 leave as required by the Healthy Workplaces, Healthy Families Act of 2014.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for
11 judgment and the following specific relief against Defendants, jointly and severally, as follows:

- 12 1. For civil penalties against Defendants on behalf of all Aggrieved Employees
13 pursuant to PAGA;
- 14 2. For reasonable attorneys' fees and costs of suit to the extent permitted by law,
15 including pursuant to California Labor Code Sections 2699(g) and/or other applicable law;
- 16 3. Pre-judgment and post-judgment interest as provided by law; and
- 17 4. For such other relief as the Court deems just and proper.

18 KLINEDINST PC

19
20 DATED: July 15, 2022

By: 

Thomas E. Daugherty
Attorney for Plaintiff SAMUEL RUBIO

Exhibit 1



Thomas E. Daugherty, Esq.
501 West Broadway, Suite 600
San Diego, California 92101
(619) 239-8131 Ext. 2284
(619) 238-8707 Fax
tdaugherty@klinedinstlaw.com

August 13, 2021

VIA ON-LINE FILING

PAGA Administrator
<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL

Corporation Service Company which will do
business in California as CSC - Lawyers
Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

and

Marron Lawyers, APC
5000 E. Spring Street, Suite 580
Long Beach CA 90815

Re: SAM RUBIO V. DIAKON LOGISTICS (DELAWARE), INC., *et al.*
PAGA Notice
LWDA Case No.:

Dear PAGA Administrator :

Please take notice that this law firm represents SAM RUBIO (“Mr. Rubio”), in his employment related claims, and on behalf of the employment claims of all other aggrieved employees, against DIAKON LOGISTICS (DELAWARE), INC., a Delaware corporation, (collectively referred to as “DIAKON”). Pursuant to the Private Attorney General Act of 2004, (PAGA), California Labor Code section 2698 et seq., this letter shall serve as written notice of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violations. Mr. Rubio intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for the violations of the California Labor Code under PAGA. This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DIAKON holds itself out as a full-service third party logistics provider which offers logistics management services for its client’s warehousing and white glove delivery needs for big and bulky items, like appliances, electronics, home furnishings, bedding, and mattresses.

DIAKON employed Mr. Rubio from approximately December 20, 2005 through April 19, 2021. Mr. Rubio worked for DIAKON as an operations manager. His primary job duties included supervising and managing delivery drivers, and making sure that the customers’ expectations were met. He supervised DIAKON’s daily operations, including daily stand up

PAGA Administrator

Re: *Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.*

August 13, 2021

Page 2

meetings, load outs, on-time arrivals, ensured that driver teams checked their products before loading and made sure they were fully loaded, and maintained a professional relationship with DIAKON's clients and assisted them on any projects they requested. He was also responsible for ensuring that all necessary reports were correct, accurate, and on-time. These included EZ Labor, KPI, Inventory, IHD, Safety Minutes, Monthly Ops Report, P+L reviews, weekly settlements, and Workbook reports. He was also charged with recruiting duties, and was constantly on the look-out for good candidates for DIAKON.

As described in detail below, DIAKON violated various sections of the California Labor Code with respect to Mr. Rubio's employment. Accordingly, on behalf of himself, all other current and former aggrieved employees, and the State of California, he alleges that DIAKON has violated the following section of the California Labor Code (all sections cited herein shall reference the California Labor Code unless otherwise noted):

§§ 245 *et seq.*: Failure to provide earned sick leave and supplemental COVID paid sick leave, as required by the Healthy Workplaces, Healthy Families Act of 2014, as amended.

FAILURE TO PROVIDE PAID SICK LEAVE AND WRITTEN NOTICE OF THE SAME IN VIOLATION OF LABOR CODE §§ 245 *et seq.*:

Since 2015, under California's Healthy Workplaces, Healthy Families Act of 2014, (the "Act") California employers have been required to provide its employees (exempt and non-exempt alike) who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at no less than one hour of paid sick leave for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) by the 120th calendar day in each year of the employee's employment, for the reasons described and under the conditions described under the Act.

DIAKON violated California Labor Code section 246, by failing to provide Mr. Rubio, and all aggrieved employees with the mandated accrual rate of paid sick leave, and by failing to carry-over paid sick leave from year to year while not providing a lump sum accrual of the full required amount at the beginning of the next benefit year. Additionally, DIAKON's violative paid sick leave plan failed to accurately report the available balance of accrued paid sick leave on each of Mr. Rubio's wage statements, or in a separate writing. Consequently, DIAKON violated the statutory rights of Mr. Rubio and all aggrieved employees, and prevented them from being aware of and able to use their full amount of paid sick leave in the time required by the statute.

In violation of Labor Code section 246, subparagraphs (b)(1), (3), and (4); (d), and (i), DIAKON did provide basic paid sick leave to its employees, but it accrued at a much lower and slower rate than is required by California law, it did not carry-over from year to year and DIAKON did not otherwise satisfy the carry-over requirement by providing the full amount of paid sick leave (24 hours) to its employees at the beginning of each year of employment, and

PAGA Administrator

Re: Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.

August 13, 2021

Page 3

DIAKON failed to accurately report to its employees the amount of paid sick leave available for use on either the employee's itemized wage statement described in Labor Code section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

California Labor Code section 246(b)(1) requires that an employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked (0.03 hours of paid sick leave per hour worked), or alternatively, under California Labor Code section 246(b)(3) and (4), such that an employee has accrued no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. Under the requirements of section 246(b)(1), an employee working 40 hours a week would accrue 1.33 hours paid sick leave per week. For an 80 hour pay period, the employee should accrue 2.66 hours of paid sick leave per 80 hours of work.

In violation of these requirements, while employed by DIAKON, Mr. Rubio's wage statements show that he accrued paid sick leave at the rate of 0.01 hours of paid sick leave per hour worked, or 0.93 hours of paid sick leave per pay period, covering 80 hours of work. Furthermore, in violation of section 246(b)(3) and (4), instead of accruing not less than 24 hours of paid sick leave by the employee's 120th calendar day of employment or in each 12-month period, under DIAKON's violative accrual plan, Mr. Rubio only accrued approximately 7.97 hours of paid sick leave by his 120th calendar day of employment in the benefit year, well short of the full amount of 24 hours required. In other words, while employed by DIAKON, Mr. Rubio accrued paid sick leave at approximately 1/3 the required rate. This violated his rights as an employee, and DIAKON wrongfully deprived him of the protections required under Labor Code section 246.

California Labor Code section 246(d) requires that accrued paid sick days shall carry over to the following year of employment, or that no accrual or carryover is required if the full amount of leave (three days or 24 hours) is received at the beginning of each year of employment, calendar year, or 12-month period. DIAKON's violative accrual method did not carry over from year to year, and did not provide a lump-sum accrual at the beginning of each benefit year. For example, in 2020, for the pay period of 11/29/2020 through 12/12/2020, Mr. Rubio had accrued 23.25 hours of available paid sick leave. There is no paid sick leave evident on his wage statement for his next pay period, from 12/13/2020 through 12/26/2020, and there is no indication that Mr. Rubio used any of his accrued paid sick leave in that pay period. In the next pay period, from 12/27/2020 through 1/9/2021, the start of the next benefit year, his wage statement shows the balance of 0.93 hours of paid sick leave for 80 hours of work in the pay period. So, DIAKON did not carry-over the balance accrued in the prior year, and it did not provide a lump-sum accrual of 24 hours at the beginning of the next benefit year. The same pattern occurred the year before, with no accrued paid sick leave roll-over from 2019 to 2020.

California Labor Code section 246(i) requires that California employers shall provide each employee with written report that sets forth the amount of paid sick leave available for use on either the employee's itemized wage statement described in Section 226 or in a separate

writing provided on the designated pay date with the employee's payment of wages. Under the law, Mr. Rubio and his fellow aggrieved employees accrued at least 2.66 hours of paid sick leave per pay period for 80 hours of work. DIAKON's violative accrual plan falsely reported that only 0.93 hours of paid sick leave accrued each pay period on their wage statements, in violation of section 246(i).

Additionally, effective March 19, 2021, DIAKON violated the rights of Mr. Rubio and all aggrieved employees by failing to provide any COVID-19 supplemental paid sick leave under Labor Code section 248.2, and by failing to report to Mr. Rubio and all aggrieved employees the amount of COVID-19 supplemental paid sick leave available to them, separately from their regular paid sick leave or other paid time off, on their wage statements or other document every pay day, as required by California law.

Labor Code section 248.2(b) requires that employers such as DIAKON provide up to 80 hours of COVID-19 supplemental paid sick leave to its employees who are/were unable to work or telework due to any of the following reasons:

(A) The covered employee is subject to a quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the State Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer who has jurisdiction over the workplace. If the covered employee is subject to more than one of the foregoing, the covered employee shall be permitted to use COVID-19 supplemental paid sick leave for the minimum quarantine or isolation period under the order or guidelines that provides for the longest such minimum period.

(B) The covered employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

(C) The covered employee is attending an appointment to receive a vaccine for protection against contracting COVID-19.

(D) The covered employee is experiencing symptoms related to a COVID-19 vaccine that prevent the employee from being able to work or telework.

(E) The covered employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.

(F) The covered employee is caring for a family member, as defined in subdivision (c) of Section 245.5, who is subject to an order or guidelines described in subparagraph (A) or who has been advised to self-quarantine, as described in subparagraph (B).

PAGA Administrator

Re: Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.

August 13, 2021

Page 5

(G) The covered employee is caring for a child, as defined in subdivision (c) of Section 245.5, whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

DIAKON violated Labor Code section 248.2(b), because it did make any available COVID-19 supplemental paid sick leave to Mr. Rubio or any other aggrieved employee, above and beyond any other paid leave they had accrued.

Under Cal Lab Code § 248.2(d)(2), for purposes of the enforcement of the payroll reporting requirements of Labor Code section 246(i) as it relates to the COVID-19 supplemental paid sick leave required under section 248.2, COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days. DIAKON violated this section, because it did not report any available COVID-19 supplemental paid sick leave to Mr. Rubio or any other aggrieved employee.

DIAKON's ongoing and systematic failure to provide sick leave benefits to its aggrieved employees violates California Labor Code sections 246 and 248.2, as set forth herein.

For each and every pay period that there was failure to accrue paid sick leave at the required rate, that there was no roll-over from year to year, and for which there was no accurate report of the available paid sick leave for each employee, DIAKON violated Labor Code § 246. For each and every time that a DIAKON employee called in sick but did not receive paid time off, or wanted to call in sick but did not do so because he or she would not be paid for the necessary sick days, DIAKON violated Labor Code § 246. DIAKON is liable for civil penalties under PAGA and Labor Code section 248.5 for these violations of the Healthy Workplaces, Healthy Families Act of 2014.

Similarly, for each and every pay period that there was failure to provide COVID-19 supplemental paid sick leave, or report the available COVID-19 supplemental paid sick leave to Mr. Rubio and all other aggrieved employee in writing, DIAKON violated Labor Code § 248.2. DIAKON is liable for civil penalties under PAGA and Labor Code section 248.5 for these violations of the Healthy Workplaces, Healthy Families Act of 2014.

Mr. Rubio and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(f)-(g).

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

PAGA Administrator

Re: Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.

August 13, 2021

Page 6

Very truly yours,

KLINEDINST PC

A handwritten signature in blue ink, appearing to read "Thomas E. Daugherty". The signature is fluid and cursive, with a large, stylized initial "T" and "D".

THOMAS E. DAUGHERTY

7019 0700 0002 0723 6295

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ _____	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$ _____	
☐ Return Receipt (electronic) \$ _____	
☐ Certified Mail Restricted Delivery \$ _____	
☐ Adult Signature Required \$ _____	
☐ Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Total P \$ _____	
Sent To _____	Marron Lawyers, APC 5000 E. Spring Street, Suite 580 Long Beach CA 90815
Street _____	
City, St _____	
PS Form _____	See reverse for instructions

7019 0700 0002 0723 6301

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee \$ _____	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	
☐ Return Receipt (hardcopy) \$ _____	
☐ Return Receipt (electronic) \$ _____	
☐ Certified Mail Restricted Delivery \$ _____	
☐ Adult Signature Required \$ _____	
☐ Adult Signature Restricted Delivery \$ _____	
Postage \$ _____	
Tot \$ _____	
Sent _____	Corporation Service Company d/b/a CSC Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Street _____	
City _____	
PS Form _____	See reverse for instructions

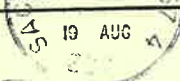
USPS TRACKING #



9590 9402 5738 0003 9410 02



First-Class Mail
Postage & Fees Paid
USPS ^{DM}
Permit No. G-10



United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Karla Hamilton

4797-2001 TED

Klinedinst.
ATTORNEYS

501 W. Broadway Suite 600
San Diego, CA 92101

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service Company d/b/a
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833



9590 9402 5738 0003 9410 02

2.

PS

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

SHIP ZAMAN HAIDARY
A/A/O CSC

☐ Agent
☐ Addressee
C. Date of Delivery

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

AUG 16 2021

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise

nature Confirmation™
nature Confirmation
stricted Delivery

lic Return Receipt

Exhibit 2



MARRON LAWYERS

A PROFESSIONAL CORPORATION

5000 E. SPRING ST., STE 580 | LONG BEACH, CA 90815 | (562) 432-7422

www.marronlaw.com

September 14, 2021

VIA CERTIFIED MAIL AND EMAIL

Thomas E. Daugherty, Esq.
Klinedinst Attorneys
501 W. Broadway, Suite 600
San Diego, California 92101
Email: TDaugherty@Klinedinstlaw.com

VIA ONLINE FILING

PAGA Administrator at
<https://dir.tfaforms.net/309>

Re: Sam Rubio v. Diakon Logistics (Delaware), Inc.
Case No.: LWDA-CM-841333-21
Employer Response and Cure Notice

Dear PAGA Administrator:

This letter constitutes the Employer Response and Cure Notice by Diakon Logistics (Delaware), Inc. (“Diakon”) to the “PAGA” notice provided to your office on behalf of Mr. Sam Rubio, by his counsel Mr. Thomas E. Daugherty dated August 13, 2021, Case Number LWDA-CM-841333-21 (the “Notice”).

Pursuant to Cal. Labor Code § 2699.3(c)(2)(A), an “employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative.” Under Cal. Labor Code § 2699(d), “cure” means that “the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes . . . and any aggrieved employee is made whole.” If the employer does so, and provides the required written notice by online filing and certified mail to the aggrieved employee or representative, then a suit under PAGA may not commence. As explained below, any violation alleged in the Notice has been cured.

The Notice alleges that Diakon:

- (1) Does not provide sick leave at the rates required under Cal. Labor Code § 246(b);
- (2) Does not either allow accrued paid sick days to carry over to the following year of employment or award the full 24 hours of paid sick leave at the beginning of each employment or calendar year, or 12-month period as required under Cal. Labor Code §246(d);
- (3) Does not provide each employee with a written report setting forth the amount of paid sick leave available for use on either the employee’s itemized wage statement or in a

September 14, 2021

Page 2 of 3

separate writing provided on the designated pay date with the employee's payment of wages, and does not set forth COVID-19 supplemental paid sick leave separately from paid sick days as required under Cal. Labor Code § 246(i); and

- (4) Does not provide up to 80 hours of COVID-19 supplemental paid sick leave to its employees who are or were unable to work or telework due to any of the enumerated reasons as required under Cal. Labor Code § 248.2(b).

In response to the Notice, Diakon has conducted a thorough review of its policies related to the Labor Code sections referenced in the Notice, and has ensured that Diakon's California sick leave policies comply with applicable law and that the available sick leave is communicated to Diakon's California employees.

With respect to the alleged violation of Cal. Labor Code §246(b), Diakon has ensured its California employees earn 24 hours of paid sick leave by their 120th calendar day of employment. Accordingly, Diakon's sick leave policy comports with §246(b). The available paid sick leave is reflected on the California employees' pay statements.

With respect to the alleged violation of Cal. Labor Code §246(d), Diakon has ensured that its California employees receive 24 hours of paid sick leave at the beginning of each calendar year. Accordingly, Diakon's sick leave policy comports with §246(d). The available sick leave is reflected on the California employees' pay statements.

With respect to the alleged violation of Cal. Labor Code §246(i), Diakon has ensured that its California employees' pay statements comport with all notice requirements, including those of §246(i). Also, importantly, §246(i) does not give rise to a claim under PAGA. This is because Cal. Labor Code §2699(g)(2) provides that "no action shall be brought under [PAGA] for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting." §246(i) explicitly requires an employer to provide employees "with written notice that sets forth the amount of paid sick leave available[.]" Therefore, §246(i) is a "notice" statute and is exempt from PAGA. *Titus v. McLane Foodservice, Inc.* (E.D. Cal. Sept. 14, 2016) 2016 WL 4797497 (explaining that Section 246(i) "requires an employer to provide written notice to an employee . . . [T]he text of PAGA itself precludes a private person from bringing a PAGA action to enforce [section 246(i).]"); *Ramirez v. C and J Well Service, Inc.* (C.D. Cal. Mar. 27, 2020) 2020 WL 58746464, at *6 ("because section 246(i) requires an employer to provide written notice to an employee, and it does not require an employer to file or report payroll or workplace information with or to the government agency, Plaintiff cannot bring this claim under PAGA for civil penalties."); *see also Segal v. Aquent LLC* (S.D. Cal. Sept. 24, 2018) 2018 WL 4599754, at *7 (striking a §246(i) claim "because notice and posting requirements are not bases for a PAGA action").

September 14, 2021

Page 3 of 3

With respect to the alleged violation of Cal. Labor Code §428.2(b), Diakon has ensured that its California employees receive all required supplemental COVID sick leave, and this supplemental leave is reflected on the employees' pay statements. Accordingly, Diakon's supplemental sick leave policy comports with §248.2(b).

Based on the above, Diakon is in full compliance with the Labor Code provisions for which the Notice alleges violations as required to "cure" under §2699(d). §2699(d) also requires that Mr. Rubio be made "whole" for any Labor Code violations. Here, however, Mr. Rubio could only have suffered harm from any conduct alleged in the Notice if he had been denied the use of sick time to which he was entitled. Diakon has reviewed its records and found that, during the relevant period, Mr. Rubio used only a small fraction of the available sick time reflected on his pay statements. Specifically, despite having significant sick time available and displayed on his pay statements Mr. Rubio appears to have used only one (1) hour of paid sick time from August of 2020 through the end of his employment with Diakon. Because Mr. Rubio did not use all of the sick time he had, he was not 'denied' the use of any sick time.¹ Therefore, Mr. Rubio has been made "whole" from any Labor Code violation alleged in the Notice.

In conclusion, pursuant to Cal. Labor Code §§ 2699.3(c)(2)(A) and 2699(g)(2), for each violation alleged in the Notice either (1) Diakon's policies comport with the underlying statutes and Mr. Rubio has been made whole, or (2) the section does not give rise to a claim for PAGA.

Very truly yours,



Alexander T. Marx, Esq.

amarx@marronlaw.com

¹ An alleged lack of notice to Mr. Rubio would not give rise to a claim for PAGA based on § 2699(g)(2)'s carve-out, as explained above.

Marron Lawyers
5000 E. Spring St., Ste. 580
Long Beach, CA 90815



\$4.280
US POSTAGE
FIRST-CLASS
FROM 90815
SEP 14 2021
stamps
endicia

062S0011480421



Thomas E. Daugherty, Esq.
Klinedinst Attorneys
501 W. Broadway, Ste. 600
San Diego CA 92101-3584

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

\$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$
Total Postage and Fees

\$

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4[®]

Postmark
Here

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

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THOMAS DAUGHERTY, ESQ
KLINEDINST ATTORNEYS
501 W. BROADWAY, STE 600
SAN DIEGO CA 92101



9590 9402 3278 7196 5914 19

2. Article Number (Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail[®]
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express[™]
☐ Registered Mail[™]
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation[™]
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Exhibit 3

June 21, 2022

VIA ON-LINE FILING

PAGA Administrator
<https://dir.tfaforms.net/128>

VIA CERTIFIED MAIL AND EMAIL

Alexander T. Marx, Esq.
Marron Lawyers, APC
5000 E. Spring Street, Suite 580
Long Beach CA 90815
amarx@marronlaw.com

**Re: LWDA Case No.: LWDA-CM-841333-21
SAM RUBIO V. DIAKON LOGISTICS (DELAWARE), INC., et al.
Notice Disputing Defendant's Attempt to Cure**

Dear PAGA Administrator:

Plaintiff Sam Rubio disputes the attempt to “cure” violations of California Labor Code by DIAKON LOGISTICS (DELAWARE), INC., (“DIAKON”) as articulated in DIAKON’s purported “cure” letter dated September 14, 2021.

Cal Lab Code § 2699.3(c)(3) provides as follows:

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

Cal Lab Code § 2699.3

PAGA Administrator

Re: *Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.*

June 21, 2022

Page 2

DIAKON's attempt to cure fails because its policy of systematically shorting its employees of the paid sick leave to which they were entitled prevented them from taking paid sick leave when they needed it. It cannot go back in time and restore their ability to take paid sick leave after the fact.

Additionally, DIAKON's attempt to cure letter misstates the requirements of Labor Code § 2699(d) by arguing that it need only make *Mr. Rubio* "whole" with its purported cure, and they falsely argue that he was not harmed. As discussed below, he was harmed and the purported cure does not make him whole. Critically, though, all aggrieved employees must be made whole, not just Mr. Rubio, as DIAKON incorrectly argues. § 2699(d) states in relevant part:

For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, **and any aggrieved employee is made whole.**" (Emphasis added.)

This means that **all** aggrieved employees must be made whole, and as with Mr. Rubio, DIAKON's attempt to cure fails to make all aggrieved employees whole, because they were deprived of the opportunity to take paid sick leave when they needed it, and worked when they should not have worked.

Mr. Rubio's wage statement undisputably shows that in December 12, 2020, he had 23.25 hours of paid sick leave available, which should have rolled over into 2021, but it did not. Instead, as of January 9, 2021, he only had 0.93 hours of paid sick leave available. He could not even take a full hour of paid sick leave, much less 3 full days, as was required. As a result of having insufficient paid sick leave available due to DIAKON's unlawful policies, Mr. Rubio worked through days which he would have taken paid sick leave had it been available to him—but it was not.

Furthermore, DIAKON's attempt to make aggrieved employees whole fails under faulty logic. DIAKON's September 14, 2021 attempt to cure letter incorrectly states the following:

Here, however, **Mr. Rubio could only have suffered harm from any conduct alleged in the Notice if he had been denied the use of sick time to which he was entitled.** Diakon has reviewed its records and found that, during the relevant period, Mr. Rubio used only a small fraction of the available sick time reflected on his pay statements. Specifically, despite having significant sick time available and displayed on his pay statements Mr. Rubio appears to have used only one (1) hour of paid sick time from August of 2020 through the end of his employment with Diakon. Because Mr. Rubio did not use all of the sick time he had, he was not 'denied' the use of any sick time.¹ Therefore, Mr. Rubio has been made "whole" from any Labor Code violation alleged in the Notice.

PAGA Administrator

Re: *Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.*

June 21, 2022

Page 3

This is false and faulty reasoning. Mr. Rubio was harmed because he was denied the use of sick time to which he was entitled, because ***it was not available to him as required under California law***. Even if he only used a “small fraction of the available sick time reflected on his pay statements,” between August 2020 and the time of his termination, as DIAKON contends, it does not mean that he would not have used more in the early months of 2021 had his full amount of paid sick leave had been available.

Under DIAKON’s unlawful paid sick leave accrual, between January 1, 2021 and the date of his termination, April 19, 2021, Mr. Rubio still had not accrued a whole day’s paid sick leave, and therefore could not take a full day of paid sick leave in 2021. From December, 2020, his available paid sick leave unlawfully was over 23 hours, which should have carried over into 2021. Instead, his available paid sick leave went to 0.00 hours as of January 1, 2021, so he could not take *any* paid sick leave. Because Mr. Rubio did not have the required amount of paid sick leave available at the beginning of 2021, he worked through days when he would have taken them off for the reasons permitted under Labor Code section 245 *et seq.* He was harmed and was not made whole because DIAKON’s unlawful policy deprived him of the opportunity to take paid sick leave when he needed it.

DIAKON violated California Labor Code section 246, by failing to provide Mr. Rubio, and all aggrieved employees with the mandated accrual rate of paid sick leave, and by failing to carry-over paid sick leave from year to year while not providing a lump sum accrual of the full required amount at the beginning of the next benefit year. Consequently, DIAKON violated the statutory rights of Mr. Rubio and all aggrieved employees, and prevented them from being able to use their full amount of paid sick leave in the time required by the statute, and DIAKON cannot retroactively cure that harm.

Additionally, effective March 19, 2021, DIAKON violated the rights of Mr. Rubio and all aggrieved employees by failing to provide any COVID-19 supplemental paid sick leave under Labor Code section 248.2, and by failing to report to Mr. Rubio and all aggrieved employees the amount of COVID-19 supplemental paid sick leave available to them, separately from their regular paid sick leave or other paid time off, on their wage statements or other document every pay day, as required by California law.

Labor Code section 248.2(b) requires that employers such as DIAKON provide up to 80 hours of COVID-19 supplemental paid sick leave to its employees who are/were unable to work or telework due COVID-19 related reasons. DIAKON violated Labor Code section 248.2(b), because it did make *any* available COVID-19 supplemental paid sick leave to Mr. Rubio or any other aggrieved employee, above and beyond any other paid leave they had accrued.

Similar to DIAKON’S failure to provide the required paid sick leave under section 246, its failure to provide any supplemental COVID paid sick under 248.2 cannot be cured because DIAKON flatly denied its employees the opportunity to take supplemental COVID paid sick.

PAGA Administrator

Re: Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.

June 21, 2022

Page 4

DIAKON simply cannot undo depriving its aggrieved employees of taking paid time off for COVID related reasons.

DIAKON's systematic failures to provide sick leave benefits to its aggrieved employees violated California Labor Code sections 246 and 248.2. DIAKON has failed to cure its violations.

Very truly yours,

KLINEDINST PC

A handwritten signature in blue ink, appearing to read "Thomas E. Daugherty", with a stylized, cursive script.

THOMAS E. DAUGHERTY

Exhibit 4



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom – SECRETARY Natalie Palugyai

Agricultural Labor Relations Board – California Unemployment Insurance Appeals Board
California Workforce Investment Board – Department of Industrial Relations
Employment Development Department – Employment Training Panel – Public Employment Relations Board

July 8, 2022

CERTIFIED MAIL

Thomas E. Daugherty, Esq.
501 West Broadway, Suite 600
San Diego, California 92101

7020 1810 0001 9079 4979

Paul Arenas, Esq.
Marron Lawyers, APC
5000 E. Spring Street, Suite 580
Long Beach CA 90815

7020 1810 0001 9079 4986

Re: Case No. LWDA-CM-841333-21
Sam Rubio v. Diakon Logistics (Delaware), Inc., et al.

Decision on Cure Dispute

PLEASE TAKE NOTICE that the Labor Workforce Development Agency (LWDA), through one or more of its departments, divisions, commissions, boards, or agencies, has reviewed Sam Rubio's Private Attorneys General Act ("PAGA") Notice; the response and cure notice submitted by employer Diakon Logistics (Delaware), Inc. ("The Employer"); and Mr. Rubio's June 21, 2022 cure dispute, and has determined as follows.

I. Background

On August 13, 2021, Mr. Rubio submitted a PAGA Notice to the LWDA asserting that the Employer (also referred to as "employer") and other entities violated Labor Code §§ 246 and 248.2. The PAGA notice alleged that the employer (1) Does not provide sick leave at the rates required; (2) Does not carry over accrued paid sick days to to the following year of employment; (3) Does not provide each employee with a written report setting forth the amount of paid sick leave available; (4) Does not set forth COVID-19 supplemental paid sick leave separately from paid sick days as required under Cal. Labor Code § 246(i); and (5) Does not provide COVID-19 supplemental paid sick leave to its employees as required under Cal. Labor Code § 248.2(b).¹

On September 14, 2021, the Employer, by attorney Alexander Marx, submitted a response to Mr. Rubio's PAGA notice, stating that the employer had "ensured" that its policies were in

¹ All further statutory references will be to the California Labor Code.

compliance with the law. The Employer also contended that its policies were in compliance with the law, and that the allegations were not subject to suit under PAGA.

On June 21, 2022, Mr. Rubio, through his attorney Thomas Daugherty, submitted a cure dispute stating that the employer had failed to cure the alleged violations.

II. The LWDA Cannot Find a Cure with respect to Alleged Violations for which No Curative Action is Alleged

The LWDA assumes, without deciding, that the provisions of Labor Code section 245 et seq. are subject to PAGA. The parties are free to argue to a court or arbitrator their positions regarding this question.

Only violations of Labor Code sections *not* listed in section 2699.5 are curable. (See §§ 2699.3, subdivision (c), 2699.5.) Sections 246 and 248.2 are not listed in section 2699.5; therefore if they are subject to PAGA they are curable.

Next, the LWDA's authority is limited to determining whether there was a cure within the meaning of PAGA. Actions taken prior to a PAGA notice are not curative actions taken in response to a PAGA notice. However, the parties are free to raise arguments about the existence of underlying violations to an appropriate court or arbitrator.

Together, the employer's September 14, 2021 letter and its June 28, 2022 letter and declaration state that it updated its records moving forward so that employees were properly credited with both forms of paid sick leave going forward.

However, the employer does not state that it took any remedial action with regard to its failure to provide both forms of paid sick leave to employees leading up to September 2021. Pursuant to § 2699(d), all aggrieved employees must be made whole. The evidence indicates that employees were insufficiently informed of the opportunity to take paid sick leave prior to September 2021.

Although the second sentence of section 2699(d) only applies explicitly to certain wage statement violations, it provides an example of making employees whole that the Legislature views as sufficient. Thus, one way of making employees whole for the employer's failure to provide correct information is to reissue corrected wage statements for the entire time period in question.

Here, the Employer has not provided any evidence that it reissued wage statements for the period prior to the correction of its record; that it compensated employees for its prior failure to inform

them of their sick leave rights;² that it informed them that it had failed to properly inform them of their rights; or that it called their attention to the correction.

The employer puts the focus on the employee and whether the employee would have taken paid sick leave if it had been made available. However, the law requires the *employer* to take the action of communicating to employees that they have an entitlement to sick leave at the time that they are entitled to take it.

As Mr. Rubio's attorney states, aggrieved employees were harmed because sick time to which they were entitled was not made available to them during the time periods in question as required under California law. The legislative history of AB 1522, the bill that became California's Healthy Workplaces, Healthy Families Act of 2014, makes clear that when employees are not provided paid sick leave, they go to work sick, they send their sick children to school, they forego medical treatment, and they don't ask to take time off, because to do so puts their job and financial well-being at-risk.

III. Conclusion

In light of the submissions by the employer and employee here, the Employer has not taken sufficient steps to cure the alleged violations. Therefore, there can be no cure.

If you have questions concerning this decision, please send an email to PAGAinfo@dir.ca.gov or call the PAGA Unit at (510) 286-1340.

Sincerely,

/s/ *Michael L. Smith*

Michael L. Smith
Attorney
Division of Labor Standards Enforcement

² Section 248.5 contains monetary remedies for violations of the article in which §§ 246 and 248.2 are found.

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DIAKON LOGISTICS, INC., a Delaware corporation, and DOES 1 to 50

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE):

SAMUEL RUBIO, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

07/15/2022 at 01:30:17 PM

Clerk of the Superior Court
By Amando Villasenor, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Court
330 W. Broadway
San Diego, CA 92101

CASE NUMBER:

(Número d 37-2022-00027959-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Thomas E. Daugherty, Esq. Klinedinst PC
501 W. Broadway, Suite 600
San Diego, CA 92101 (619) 239-8131

DATE:
(Fecha) 07/18/2022

Clerk, by A. Villasenor, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under:

☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Thomas E. Daugherty, Esq., SBN 269063

Klinedinst PC

501 W. Broadway, Suite 600, San Diego, CA 92101

TELEPHONE NO.: (619) 239-8131

FAX NO. (Optional): (619) 238-8707

E-MAIL ADDRESS: tdaugherty@klinedinstlaw.com

ATTORNEY FOR (Name): Plaintiff SAMUEL RUBIO

FOR COURT USE ONLY

ELECTRONICALLY FILEDSuperior Court of California,
County of San Diego

07/15/2022 at 01:30:17 PM

Clerk of the Superior Court
By Amanda Villasenor, Deputy Clerk**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

STREET ADDRESS: 330 W. Broadway

MAILING ADDRESS:

CITY AND ZIP CODE: San Diego, CA 92101

BRANCH NAME: Central

CASE NAME: Rubio v. Diakon Logistics, Inc.

CIVIL CASE COVER SHEET☒ **Unlimited**(Amount
demanded
exceeds \$25,000)☐ **Limited**(Amount
demanded is
\$25,000)**Complex Case Designation**☐ Counter☐ JoinderFiled with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

37-2022-00027959-CU-OE-CTL

JUDGE:

Judge Matthew C. Braner

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:**Auto Tort**☐ Auto (22)☐ Uninsured motorist (46)**Other PI/PD/WD (Personal Injury/Property
Damage/Wrongful Death) Tort**☐ Asbestos (04)☐ Product liability (24)☐ Medical malpractice (45)☐ Other PI/PD/WD (23)**Non-PI/PD/WD (Other) Tort**☐ Business tort/unfair business practice (07)☐ Civil rights (08)☐ Defamation (13)☐ Fraud (16)☐ Intellectual property (19)☐ Professional negligence (25)☐ Other non-PI/PD/WD tort (35)**Employment**☐ Wrongful termination (36)☒ Other employment (15)**Contract**☐ Breach of contract/warranty (06)☐ Rule 3.740 collections (09)☐ Other collections (09)☐ Insurance coverage (18)☐ Other contract (37)**Real Property**☐ Eminent domain/Inverse
condemnation (14)☐ Wrongful eviction (33)☐ Other real property (26)**Unlawful Detainer**☐ Commercial (31)☐ Residential (32)☐ Drugs (38)**Judicial Review**☐ Asset forfeiture (05)☐ Petition re: arbitration award (11)☐ Writ of mandate (02)☐ Other judicial review (39)**Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400–3.403)**☐ Antitrust/Trade regulation (03)☐ Construction defect (10)☐ Mass tort (40)☐ Securities litigation (28)☐ Environmental/Toxic tort (30)☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)**Enforcement of Judgment**☐ Enforcement of judgment (20)**Miscellaneous Civil Complaint**☐ RICO (27)☐ Other complaint (not specified above) (42)**Miscellaneous Civil Petition**☐ Partnership and corporate governance (21)☐ Other petition (not specified above) (43)2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:a. ☐ Large number of separately represented partiesd. ☒ Large number of witnessesb. ☐ Extensive motion practice raising difficult or novel
issues that will be time-consuming to resolvee. ☐ Coordination with related actions pending in one or more
courts in other counties, states, or countries, or in a federal
courtc. ☒ Substantial amount of documentary evidencef. ☐ Substantial postjudgment judicial supervision3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 15, 2022

Thomas E. Daugherty

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Samuel Rubio	
DEFENDANT(S): Diakon Logistics Inc	
SHORT TITLE: RUBIO VS DIAKON LOGISTICS INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2022-00027959-CU-OE-CTL

Judge: Matthew C. Braner

Department: C-60

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| ☐ Mediation (court-connected) | ☐ Non-binding private arbitration |
| ☐ Mediation (private) | ☐ Binding private arbitration |
| ☐ Voluntary settlement conference (private) | ☐ Non-binding judicial arbitration (discovery until 15 days before trial) |
| ☐ Neutral evaluation (private) | ☐ Non-binding judicial arbitration (discovery until 30 days before trial) |
| ☐ Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 07/18/2022

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
DIVISION: Central	
TELEPHONE NUMBER: (619) 450-7060	
PLAINTIFF(S) / PETITIONER(S): Samuel Rubio	
DEFENDANT(S) / RESPONDENT(S): Diakon Logistics Inc	
RUBIO VS DIAKON LOGISTICS INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE (CIVIL)	CASE NUMBER: 37-2022-00027959-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Matthew C. Braner

Department: C-60

COMPLAINT/PETITION FILED: 07/15/2022

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	01/13/2023	11:15 am	C-60	Matthew C. Braner

Due to the COVID-19 pandemic, all Case Management Conferences (CMCs) are being conducted virtually unless there is a court order stating otherwise. Prior to the hearing date, visit the "virtual hearings" page for the most current instructions on how to appear for the applicable case-type/department on the court's website at www.sdcourt.ca.gov.

A Case Management Statement (JC Form #CM-110) must be completed by counsel for all parties and by all self-represented litigants and timely filed with the court at least 15 days prior to the initial CMC. (San Diego Superior Court (SDSC) Local Rules, rule 2.1.9; Cal. Rules of Court, rule 3.725).

All counsel of record and self-represented litigants must appear at the CMC, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of Alternative Dispute Resolution (ADR) options.

It is the duty of each plaintiff (and cross-complainant) to serve a copy of this Notice of Case Assignment and Case Management Conference (SDSC Form #CIV-721) with the complaint (and cross-complaint), the Alternative Dispute Resolution (ADR) Information Form (SDSC Form # CIV-730), a Stipulation to Use Alternative Dispute Resolution (ADR) (SDSC Form # CIV-359), and other documents on all parties to the action as set out in SDSC Local Rules, rule 2.1.5.

TIME FOR SERVICE AND RESPONSE: The following rules apply to civil cases except for collections cases under California Rules of Court, rule 3.740(a), unlawful detainer actions, proceedings under the Family Code, and other proceedings for which different service requirements are prescribed by law (Cal. Rules of Court, rule 3.110; SDSC Local Rules, rule 2.1.5):

- **Service:** The complaint must be served on all named defendants, and proof of service filed with the court within 60 days after filing the complaint. An amended complaint adding a defendant must be served on the added defendant and proof of service filed within 30 days after filing of the amended complaint. A cross-complaint against a party who has appeared in the action must be accompanied by proof of service on that party at the time it is filed. If it adds a new party, the cross-complaint must be served on all parties and proof of service on the new party must be filed within 30 days of the filing of the cross-complaint.
- **Defendant's appearance:** Unless a special appearance is made, each defendant served must generally appear (as defined in Code of Civ. Proc. § 1014) within 30 days of service of the complaint/cross-complaint.
- **Extensions:** The parties may stipulate without leave of court to one 15-day extension beyond the 30-day time period prescribed for the response after service of the initial complaint (SDSC Local Rules, rule 2.1.6). If a party fails to serve and file pleadings as required under this rule, and has not obtained an order extending time to serve its pleadings, the court may issue an order to show cause why sanctions shall not be imposed.

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Official Court Reporters are not normally available in civil matters, but may be requested in certain situations no later than 10 days before the hearing date. See SDSC Local Rules, rule 1.2.3 and Policy Regarding Normal Availability and Unavailability of Official Court Reporters (SDSC Form #ADM-317) for further information.

ALTERNATIVE DISPUTE RESOLUTION (ADR): The court discourages any unnecessary delay in civil actions; therefore, continuances are discouraged and timely resolution of all actions, including submitting to any form of ADR is encouraged. The court encourages and expects the parties to consider using ADR options prior to the CMC. The use of ADR will be discussed at the CMC. Prior to the CMC, parties stipulating to the ADR process may file the Stipulation to Use Alternative Dispute Resolution (SDSC Form #CIV-359).

NOTICE OF E-FILING REQUIREMENTS AND IMAGED DOCUMENTS

Effective April 15, 2021, e-filing is required for attorneys in represented cases in all limited and unlimited civil cases, pursuant to the San Diego Superior Court General Order: In Re Procedures Regarding Electronically Imaged Court Records, Electronic Filing and Access to Electronic Court Records in Civil and Probate Cases. Additionally, you are encouraged to review CIV-409 for a listing of documents that are not eligible for e-filing. E-filing is also encouraged, but not mandated, for self-represented litigants, unless otherwise ordered by the court. All e-filers are required to comply with the e-filing requirements set forth in Electronic Filing Requirements (Civil) (SDSC Form #CIV-409) and Cal. Rules of Court, rules 2.250-2.261.

All Civil cases are assigned to departments that are part of the court's "Imaging Program." This means that original documents filed with the court will be imaged, held for 30 days, and then destroyed, with the exception of those original documents the court is statutorily required to maintain. The electronic copy of the filed document(s) will be the official court record, pursuant to Government Code § 68150. Thus, original documents should not be attached to pleadings filed with the San Diego Superior Court, unless it is a document for which the law requires an original be filed. Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant, or petitioner to serve a copy of this Notice of Case Assignment and Case Management Conference (Civil) (SDSC Form #CIV-721) with the complaint, cross-complaint, or petition on all parties to the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words "IMAGED FILE" in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.

The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and may be found on the court's website at www.sdcourt.ca.gov.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2022-00027959-CU-OE-CTL

CASE TITLE: Rubio vs Diakon Logistics Inc [E-File]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.