

FARRAH MIRABEL, SBN # 162933

fmesq@fmirabel.com

LAW OFFICES OF FARRAH MIRABEL

1070 Stradella Rd.

Los Angeles, CA 90077

TELEPHONE: (714) 972-0707 | FAX: (949) 417-1796

Attorneys for Plaintiff, VICENTE TORRIJOS CAMPOS, on behalf of himself and for all similarly situated persons

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

VICENTE TORRIJOS CAMPOS, on behalf of
himself and for all similarly situated persons, and
the general public;

Plaintiff,

vs.

ACI LAST MILE CALIFORNIA LLC; and DOES
1-50 ALL INCLUSIVE,

Defendants.

Case No.: **21STCV45469**

Assigned to:

Dept.:

**CLASS ACTION COMPLAINT FOR DAMAGES
FOR:**

1. **Unpaid Missed Rest Breaks (Labor Code section 226.7(a) and IWC Wage Order No. 9-2001 section 12);**
2. **Unpaid Missed Meal Breaks (Labor Code sections 226.7 and 512(a) and IWC Wage Order No. 9-2001 section 11);**
3. **Failure to Pay for All Overtime Wages Earned (Labor Code sections 510 and 1194 and IWC Wage Order 9-2001 section 3);**
4. **Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor Code sections 204, 1194 and 1197);**
5. **Failure to Maintain Accurate Payroll Records (Labor Code sections 226(a), 1174 and 1198.5 and IWC Wage Order No. 9-2001 section 7);**
6. **Failure to Pay Wages Upon Separation (Labor Code sections 201 – 203);**
7. **Failure to Pay for Sick Days (Labor Code sections 246(a) and 248.5);**
8. **Failure to Reimburse Required Business Expenses (Labor Code section 2802);**
9. **Willful Misclassification of an Individual as an Independent Contractor (in Violation of Labor Code section 226.8);**
10. **Violation of California Business and**

Professions Code § 17200, et seq.;

11. Unlawful Discrimination Based on Cal. Govt. Code § 12940;

12. Wrongful Termination in Violation of Public Policy;

13. Wrongful Termination-Retaliatory Termination [Cal. Govt. Code § 12940(h)];

14. Wrongful Termination-Failure to Accommodate [Cal. Govt. Code § 12940(m)];

15. Wrongful Termination-Failure to Engage in Interactive Process [Cal. Govt. Code § 12940(n)]; and

16. Civil Penalties Pursuant to Labor Code § 2699 (PAGA Penalties)

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFF, VICENTE TORRIJOS CAMPOS, individually on behalf of himself and on behalf of all similarly situated individuals, and the general public, and allege as follows:

The allegations in this Complaint, stated on information and belief, have evidentiary support and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

NATURE OF THE ACTION

1. Defendants are operating a business in Los Angeles, California.
2. During the relevant timeframe, Plaintiff and Class Members were employed by Defendant, ACI LAST MILE CALIFORNIA LLC, in various capacities. Defendant is located at 330 Golden Shore, Suite 410, Long Beach, CA 90802.
3. This action for relief arises from Defendants' failure to provide off-duty rest and meal periods as required by law; failure to compensate Plaintiff and Class Members at the required rate for each occasion in which Defendants failed to provide rest and meal breaks; failure to pay overtime wages and for all hours worked; failure to keep accurate payroll records, such that Plaintiff and Class Members were given no wage statements to accurately reflect all the hours worked and all wages earned; failure to timely pay all

1 wages due upon separation; failure to pay the minimum wage and all wages earned;
2 failure to pay for sick days; and failure to reimburse for necessary business expenditures.
3 Defendants also willfully misclassified Plaintiffs and Class Members as independent
4 contractors. Plaintiff VICENTE TORRIJOS CAMPOS has an individual cause of action
5 against Defendants for failure to accommodate and engage in the interactive process,
6 unlawful discrimination and wrongful and retaliatory termination.

7 **THE PARTIES**

- 8 4. Plaintiff, VICENTE TORRIJOS CAMPOS, is a resident of California.
- 9 5. Defendants, at all times mentioned herein, are employers whose employees worked for
10 throughout the County of Los Angeles in the State of California.
- 11 6. The true names and capacities, whether individual, corporate, associate or otherwise of
12 each of the Defendants designated herein as a DOE are unknown to Plaintiff and Class
13 Members at this time, who therefore, sue said Defendants by fictitious names, DOES 1 to
14 50, and will ask leave of this Court for permission to amend this Complaint to show their
15 names and capacities when the same have been ascertained. Plaintiff and Class Members
16 are informed and believe and thereon allege that each of the Defendants designated as a
17 DOE is legally responsible in some manner for the events and happenings herein referred
18 to, and caused injuries and damages thereby to Plaintiff and Class Members as herein
19 alleged.
- 20 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
21 to "Defendant" such reference shall refer to all Defendants.
- 22 8. Plaintiff and Class Members, on information and belief and based upon such basis, allege
23 that at all times herein mentioned, each of the Defendants were acting as the agent,
24 servant, employee of each of the other Defendants, within the scope of said agency and
25 employment.
- 26 9. During the times and places of the incident in question, Defendants, and each of them,
27 their agents, servants and employees became liable to Plaintiff and Class Members for the
28 reasons described in the complaint herein, and thereby proximately caused Plaintiff and
Class Members to sustain damages as set forth herein.
10. Plaintiff and Class Members, on information and belief and based upon such basis, allege
that all Defendants carried out a joint scheme, business plan or policy in all respects

1 pertinent hereto and all acts and omissions herein complained of were performed within
2 the course and scope of said employment, service, agency, common scheme, plan and/or
3 policy.

- 4 11. Plaintiff and Class Members, on information and belief and based upon such basis, allege
5 that Defendants' founders, owners, shareholders, executive officers, managers, and
6 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise
7 to the claims asserted herein and derived personal financial benefit from such conduct at
8 the expense of Plaintiff and Class Members.

9 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

- 10 12. Plaintiff and Class Members are informed and believe, and based thereon allege, that
11 there exists such a unity of interest and ownership between Defendants and DOES 1-50
12 that the individuality and separateness of Defendants have ceased to exist.

- 13 13. Plaintiff and Class Members are informed and believe, and based thereon allege, that
14 despite the formation of purported corporate existence, Defendants and DOES 1-50 are,
15 in reality, one and the same as Defendants, including, but not limited to because:

16 a. Defendants are completely dominated and controlled by DOES 1-50, who personally
17 committed the frauds and violated the laws as set forth in this complaint, and who have
18 hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
19 accomplish some other wrongful or inequitable purpose.

20 b. DOES 1-50 derive actual and significant monetary benefits by and through
21 Defendants' unlawful conduct, and by using Defendants as the funding source for their
22 own personal expenditures.

23 c. Plaintiff and Class Members are informed and believe that Defendants and DOES 1-
24 50, while really one and the same, were segregated to appear as though separate and
25 distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing
26 some other wrongful or inequitable purpose.

27 d. Plaintiff and Class Members are informed and believe that Defendants do not comply
28 with all requisite corporate formalities to maintain a legal and separate corporate
existence.

e. Plaintiff and Class Members are informed and believe, and based thereon allege, that
the business affairs of Defendants and DOES 1-50 are, and at all times relevant were, so

1 mixed and intermingled that the same cannot reasonably be segregated, and the same are
2 in inextricable confusion. Defendants are, and at all times relevant hereto were, used by
3 DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs,
4 and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence
5 of Defendants would not promote justice, in that it would permit Defendants to insulate
6 themselves from liability to Plaintiff and Class Members for violations of the
7 Government Code and other statutory violations. The corporate existence of Defendants
8 and DOES 1-50 should be disregarded in equity and for the ends of justice because such
9 disregard is necessary to avoid fraud and injustice to Plaintiff and Class Members herein.

10 14. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their
11 separate corporate existence must be disregarded.

12 15. As a result of the aforementioned facts, Plaintiff and Class Members are informed and
13 believe, and based thereon allege that Defendants and DOES 1-50 are Plaintiff and Class
14 Members' joint employers by virtue of a joint enterprise, and that Plaintiff and Class
15 Members are employees of Defendants, and DOES 1-50. Plaintiff and Class Members
16 performed services for each and every one of Defendants, and to the mutual benefit of all
17 Defendants, and all Defendants shared control of Plaintiff and Class Members as
18 employees, either directly or indirectly, and the manner in which Defendants' business
19 was and is conducted.

20 16. Alternatively, Plaintiff and Class Members are informed and believe and, based
21 thereupon allege, that as and between DOES 1-50 and Defendants, (1) there is an express
22 or implied agreement of assumption pursuant to which DOES 1-50 agreed to be liable for
23 the debts of Defendants, (2) the transaction between DOES 1-50 and Defendants amounts
24 to a consolidation or merger of the two corporations, (3) DOES 1-50 is a mere
25 continuation of Defendants, or (4) the transfer of assets to DOES 1-50 is for the
26 fraudulent purpose of escaping liability for Defendants' debts. Accordingly, DOES 1-50
27 are the successors of Defendants, and are liable on that basis.

28 **JURISDICTION AND VENUE**

17. This Court has jurisdiction over this action pursuant to California *Code of Civil
Procedure* § 410.10. The damages exceed the jurisdictional minimum of this Court.

- 1 18. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5
2 because the incidents complained of occurred in Los Angeles County, California.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

- 4 19. Plaintiff and Class Members are informed and believe that Defendants own, manage,
5 and/or operate ACI LAST MILE CALIFORNIA LLC, which provides print media and
6 parcel distribution services doing business in Los Angeles County.
- 7 20. During the relevant timeframe, Defendant employed Plaintiff, VICENTE TORRIJOS
8 CAMPOS, beginning around August 1996 to June 22, 2021. Plaintiff was employed as a
9 driver and delivery person, whose duties included delivering over 15,000 newspapers in
10 three days. He worked from 3:00 a.m. to anywhere between 6:00 p.m. to 8:00 p.m., three
11 days per week, during Monday, Tuesday, and Wednesday. Plaintiff's last pay rate was
12 approximately \$790.00 per week. It was mandatory for the Plaintiff to make deliveries to
13 specific homes on specific days of the week. Omar was his supervisor for about two
14 years.
- 15 21. At times, Plaintiff and Class Members were not reimbursed for necessary business
16 expenditures. Plaintiff Campos had to use his own vehicle and spend his own money on
17 gas to carry out his duties for Defendant's business, but Defendant never reimbursed him
18 for these costs. Plaintiff Campos also had to pay for bags to carry and distribute the
19 newspapers.
- 20 22. During the relevant timeframe, Plaintiff and Class Members worked more than eight
21 hours per day and 40 hours per week. In addition, Plaintiff and Class Members worked
22 additional time off the clock, for which they were not compensated. Defendants failed to
23 pay for all hours worked, and overtime wages at the legal rates of pay for all overtime
24 hours worked.
- 25 23. During the relevant timeframe, Plaintiff and Class Members worked shifts of over four
26 hours, and were not given a ten-minute, uninterrupted rest break for each such shift.
27 Plaintiff and Class Members worked during the rest periods either under the direction and
28 supervision of Defendants, or with Defendants' knowledge and consent. Furthermore,
Defendants created schedules that made it difficult or impossible for Plaintiff and Class
Members to take their rest breaks.

- 1 24. During the relevant timeframe, Plaintiff and Class Members worked shifts of over five
2 hours, and were not given a thirty-minute, uninterrupted meal break for each such shift.
3 Also, Plaintiff and Class Members were not provided with a second meal break when
4 they worked more than 10 hours a day. Plaintiff and Class Members worked during the
5 meal periods either under the direction and supervision of Defendant, or with
6 Defendant's knowledge and consent. Furthermore, Defendant created schedules that
7 made it difficult or impossible for Plaintiff and Class Members to take their meal breaks.
- 8 25. During the relevant timeframe, Defendants failed to compensate Plaintiff and Class
9 Members at the required rate for each occasion in which Defendants failed to provide rest
10 breaks and meal breaks. As such, Defendants failed to pay for all the hours worked and
11 all wages earned by Plaintiff and Class Members.
- 12 26. During the relevant timeframe, Defendants failed to provide Plaintiff and Class Members
13 with sick days, as required by statute.
- 14 27. During the relevant timeframe, Defendants failed to maintain accurate payroll records,
15 such that Plaintiff and Class Members were given no wage statements to accurately
16 reflect their true compensation and all the hours worked. Defendant failed to provide
17 Plaintiff and Class Members with a means of accurate timekeeping, including a means of
18 clocking in and clocking out.
- 19 28. During the relevant timeframe, Defendants also willfully misclassified Plaintiffs and
20 Class Members as independent contractors.
- 21 29. During the relevant timeframe, Defendants did not issue an accurate final paycheck to
22 Plaintiff and Class Members in accordance with the timeframes prescribed by law.
- 23 30. Labor Code section 226.8(a)(1) states: "It is unlawful for any person or employer to
24 engage in...[w]illful misclassification of an individual as an independent contractor."
- 25 31. California courts have used the "*Borello* test" to distinguish employees from independent
26 contractors, named after *S. G. Borello & Sons, Inc. v. Dep't of Indus. Rels.* (1989) 48
27 Cal.3d 341. "[T]he question of whether the carriers are employees or independent
28 contractors must be determined under the *Borello* test." (*Becerra v. McClatchy Co.*
(2021) 69 Cal.App.5th 913.)
32. The test set forth by the *Borello* Court identified several secondary factors: "(1) whether
there is a right to fire at will without cause; (2) whether the one performing services is

1 engaged in a distinct occupation or business; (3) the kind of occupation, with reference to
2 whether, in the locality, the work is usually done under the direction of the principal or by
3 a specialist without supervision; (4) the skill required in the particular occupation; (5)
4 whether the principal or the worker supplies the instrumentalities, tools, and the place of
5 work for the person doing the work; (6) the length of time for which the services are to be
6 performed; (7) the method of payment, whether by the time or by the job; (8) whether or
7 not the work is a part of the regular business of the principal; (9) whether or not the
8 parties believe they are creating an employer-employee relationship; (10) whether the
9 classification of independent contractor is bona fide and not a subterfuge to avoid
10 employee status; (11) the hiree's degree of investment other than personal service in his
11 or her own business and whether the hiree holds himself or herself out to be in business
12 with an independent business license; (12) whether the hiree has employees; (13) the
13 hiree's opportunity for profit or loss depending on his or her managerial skill; and (14)
14 whether the service rendered is an integral part of the alleged employer's
15 business.” *Sotelo v. Medianews Group, Inc.* (2012) 207 Cal.App.4th 639, 656-657.

- 16 33. In the instant case, Plaintiff and other distributors 1) could be fired by Defendant ACI
17 LAST MILE CALIFORNIA LLC without cause; 2) they were not engaged in a distinct
18 occupation or business; (3), the work was usually done under the direction of Defendant
19 ACI LAST MILE CALIFORNIA LLC; (4) there was no skill required; (5) Defendant
20 ACI LAST MILE CALIFORNIA LLC supplied the newspapers; (6) Plaintiff and Class
21 Members had to work about 40 hours weekly for Defendant ACI LAST MILE
22 CALIFORNIA LLC; (7) Plaintiff and Class Members were paid weekly; (8) the work is a
23 part of the regular business of Defendant ACI LAST MILE CALIFORNIA LLC; (9)
24 Plaintiff and Class Members believed they were employees of Defendant ACI LAST
25 MILE CALIFORNIA LLC; (10) the classification of independent contractor is not bona
26 fide and not is a subterfuge to avoid employee status; (11) they are providing personal
27 service and had no independent business license; (12) they had no employees; (13) they
28 had no opportunity for profit or loss depending on their skill; and (14) the service
rendered is an integral part of Defendant ACI LAST MILE CALIFORNIA LLC's
business.

1 34. Under the *Borello* test, Plaintiff and the Class Members are clearly “employees” and not
2 “independent contractors.”

3 35. Under Borello test, Defendant ACI LAST MILE CALIFORNIA LLC intentionally and
4 willfully misclassified Plaintiff and Class Members as independent contractors in
5 violation of Labor Code section 226.8(a). This misclassification was also part of a pattern
6 and practice that applied to all of the Aggrieved Employees, and Class Members and not
7 just to Plaintiff.

8 36. A few months prior to his termination, while he was working for Defendants, Plaintiff
9 VICENTE TORRIJOS CAMPOS was carrying a huge stack of newspapers when he felt
10 a sharp pain in his abdomen. He advised his supervisor, Agustin Telera, that day about
11 what had happened, and Mr. Telera advised him to be careful next time and to wear a
12 support belt. Plaintiff requested workers’ compensation benefits from his supervisor but
13 was soon terminated thereafter.

14 37. Defendant wrongfully terminated Plaintiff on June 22, 2021. Plaintiff was 59 years old at
15 the time of the termination and was experiencing pain from a work-related injury,
16 carrying a huge stack of newspapers, causing Plaintiff to suffer from a hernia. Even
17 though Plaintiff notified Defendant of his injury, Defendant failed and refused to provide
18 Plaintiff with any medical treatment and/or work accommodation(s), and instead
19 Defendant wrongfully terminated Plaintiff. Defendant did not give any notice to Plaintiff
20 prior to his termination.

21 **CLASS ACTION ALLEGATIONS**

22 38. Plaintiff bring this action on their own behalf, as well as on behalf of each and all other
23 persons similarly situated, and thus, seek class certification. The class shall be defined as
24 follows:

25 “All persons who were employed at ACI LAST MILE CALIFORNIA LLC, in the State
26 of California during the period commencing four years from the date of PAGA filing,
27 through the entry of final judgment in this action.”

28 39. Plaintiff propose that the following sub-classes be created:

- a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All individuals
who have been employed and are currently employed at ACI LAST MILE
CALIFORNIA LLC, within the relevant time periods prior to the filing of this Complaint

1 until resolution of this lawsuit who did not receive their required meal breaks pursuant to
2 the *California Labor Code* and/or applicable orders of the IWC.

- 3 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All individuals who
4 have been employed and are currently employed at ACI LAST MILE CALIFORNIA
5 LLC, within the relevant time periods prior to the filing of this Complaint until resolution
6 of this lawsuit who did not receive their required rest breaks pursuant to the *California*
7 *Labor Code* and/or applicable orders of the IWC.
- 8 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals who
9 have been and are currently employed at ACI LAST MILE CALIFORNIA LLC, within
10 the relevant time periods prior to the filing of this Complaint until resolution of this
11 lawsuit who were not paid full complete and accurate compensation for all hours worked.
- 12 d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals who
13 have been and are currently employed at ACI LAST MILE CALIFORNIA LLC, within
14 the relevant time periods prior to the filing of this Complaint until resolution of this
15 lawsuit who were not paid full complete and accurate compensation for all overtime
16 worked.
- 17 e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All individuals
18 who have been and are currently employed at ACI LAST MILE CALIFORNIA LLC,
19 within the relevant time periods prior to the filing of this Complaint until resolution of
20 this lawsuit whose were not provided with wage statements to accurately reflect gross
21 wages earned. Specifically, all the hours worked, the overtime and additional hours of
22 pay employees earn for each workday they did not receive a meal and/or rest break. This
23 subclass includes the Class Members whose final paycheck did not accurately reflect
24 gross wages earned. Specifically, all the hours worked, the overtime and additional hours
25 of pay employees earn for each workday they did not receive a meal and/or rest break.
- 26 f. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All individuals
27 who were employed at ACI LAST MILE CALIFORNIA LLC, within the relevant time
28 periods prior to the filing of this Complaint until resolution of this lawsuit who did not
receive their final paycheck within 72 hours after the final day of work or at the time of
their termination.

- 1 g. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All individuals
2 who have been and are currently employed at ACI LAST MILE CALIFORNIA LLC,
3 within the relevant time periods prior to the filing of this Complaint until resolution of
4 this lawsuit who did not receive at least the minimum wage for all the hours worked.
- 5 h. A proposed sub-class (*hereinafter* “Paid Sick Days Class”) is defined as: All individuals
6 who have been and are currently employed at ACI LAST MILE CALIFORNIA LLC,
7 within the relevant time periods prior to the filing of this Complaint until resolution of
8 this lawsuit who worked in California for Defendant for 30 or more days within a year
9 from the commencement of employment and did not receive paid sick days.
- 10 i. A proposed sub-class (*hereinafter* “Business Expenses Class”) is defined as: All
11 individuals who have been and are currently employed at ACI LAST MILE
12 CALIFORNIA LLC, within the relevant time periods prior to the filing of this Complaint
13 until resolution of this lawsuit who worked in California for Defendant who were not
14 adequately compensated for necessary business expenses.
- 15 j. A proposed sub-class (*hereinafter* “Willful Misclassification Class”) is defined as: All
16 individuals who have been and are currently employed at ACI LAST MILE
17 CALIFORNIA LLC, within the relevant time periods prior to the filing of this Complaint
18 until resolution of this lawsuit who worked in California for Defendant who were
19 willfully misclassified as an independent contractor.
- 20 40. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the
21 following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime
22 Class, Wage Statement Class, Final Paycheck Class, Minimum Wage Class, Paid Sick
23 Days Class, Business Expenses Class, and Willful Misclassification Class.
- 24 41. All claims alleged herein arise under California law for which Plaintiff and Class
25 Members seek relief authorized by California law.
- 26 42. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s)
27 have a controlling interest, any officers, directors, and shareholders of Defendant, and
28 legal representatives, heirs, successors, and assigns of Defendant.
43. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

1 Numerosity: The members of the Class (and each subclass, if any) are so numerous that
2 joinder of all members would be unfeasible and impractical. The membership of the
3 Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater
4 than fifty (50) individuals and the identity of such membership is readily ascertainable by
5 inspection of Defendant's employment records.

6 Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests of
7 each Class Member with whom they have a well-defined community of interest, and
8 Plaintiff's claims (or defenses, if any), are typical of all Class Members as demonstrated
9 herein.

10 Adequacy: Plaintiff is qualified to, and will fairly and adequately protects the interests of
11 each Class Member with whom he has a well-defined community of interest and
12 typicality of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to
13 the Court to make known any relationship, conflict, or differences with any Class
14 Member. Plaintiff's attorneys and proposed Class counsel are versed in the rules
15 governing class action discovery, certification, and settlement. Plaintiff has incurred,
16 and, throughout the duration of this action, will continue to incur costs and attorneys' fees
17 that have been, are, and will be necessarily expended for the prosecution of this action for
18 the substantial benefit of each Class Member.

19 Superiority: The nature of this action makes the use of class action adjudication superior
20 to other methods. Class action will achieve economies of time, effort, and expense as
21 compared with separate lawsuits, and will avoid inconsistent outcomes because the same
22 issues can be adjudicated in the same manner and at the same time for the entire class.

23 44. There are common questions of law and fact as to the Class (and each subclass, if any),
24 that predominate over questions affecting only individual members, including but not
25 limited to:

26 A. Whether Defendant had a policy of not providing uninterrupted statutory
27 mandated rest periods to Plaintiff and Class Members or compensation for rest
28 periods;

 B. Whether Defendant had a policy of not providing uninterrupted statutory
 mandated meal periods to Plaintiff and Class Members or compensation for meal
 periods;

- 1 C. Whether Defendant created schedules in such a manner that made it difficult or
2 impossible for Plaintiff, and similarly situated Class Members, to take
3 uninterrupted rest periods;
- 4 D. Whether Defendant created schedules in such a manner that made it difficult or
5 impossible for Plaintiff, and similarly situated Class Members, to take
6 uninterrupted meal periods;
- 7 E. Whether Defendant failed to pay Plaintiff and Class Members for the overtime
8 hours worked during the relevant timeframe;
- 9 F. Whether Defendant had a policy of requiring Plaintiff and Class Members to
10 continue working before clocking in and/or after clocking out;
- 11 G. Whether Defendant failed to pay Plaintiff and Class Members for the total hours
12 worked during the relevant timeframe;
- 13 H. Whether Defendants failed to pay Plaintiff and Class Members for accrued sick
14 pay;
- 15 I. Whether Defendant failed to keep accurate payroll records, such that accurate
16 wage statements were not issued to Plaintiff and Class Members;
- 17 J. Whether Defendant failed to pay Plaintiff and Class Members an accurate and
18 timely final paycheck;
- 19 K. Whether Defendant failed to pay Plaintiff and Class Members at least minimum
20 wage for all the hours worked;
- 21 L. Whether Defendant failed to compensate Plaintiff and Class Members for
22 necessary business expenses;
- 23 M. Whether Defendants willfully misclassified Plaintiff and Class Members as
24 independent contractors;
- 25 N. Whether Defendant improperly retained, converted, appropriated, or deprived
26 Plaintiff and other Class Members of the use of monies or sums, which Plaintiff
27 and Class Members were legally entitled to;
- 28 O. Whether Defendant engaged in unfair business practices in violation of California
Business and Professions Code §§ 17200, et seq.; and
- P. The appropriate amount of the damages, restitution, or monetary penalties
resulting from Defendant's violations of California law.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

46. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
47. At all times herein set forth, Labor Code section 218 authorizes an employee to sue directly for any wages or penalty due to him or her under this article of the Labor Code.
48. At all times herein set forth, Labor Code section 226.7(a) provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the IWC.
49. The language of IWC Wage Order No. 9-2001 section 12(A) relating to rest periods tracks the language of the Labor Code. (*Code of Regulations*, title 8, section 11070, subd. 11.). Pursuant to IWC Wage Order No. 9-2001 section 12(A): “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four hours (4) or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deductions from wages.”

- 1 50. During the relevant time period, Plaintiff and Class Members worked more than three and
2 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they
3 were legally entitled to pursuant to IWC Wage Order 9-2001, section 12.
- 4 51. Defendants' conduct, as alleged herein, violates IWC Wage Order 9-2001, section 12 and
5 Labor Code section 226.7(a), which provides that no employer shall require any
6 employee to work during any rest period mandated by an applicable order of the IWC.
- 7 52. Pursuant to Labor Code section 226.7(b), and IWC Wage Order 9-2001 section 12(B),
8 Plaintiff and Class Members are entitled to recover from Defendants one (1) additional
9 hour of pay at Plaintiff and Class Members' regular rate of compensation for each work
10 day that a rest period was not provided, for a three-year statutory period dating back from
11 the date of the commencement of this action.
- 12 53. Pursuant to Labor Code sections 558 and 1197.1, Plaintiff and Class Members are
13 entitled to fifty dollars (\$50.00) for each pay period for which they were underpaid in
14 addition to an amount sufficient to recover underpaid wages and for each subsequent
15 violation, one hundred dollars (\$100.00) for each pay period for which they were
16 underpaid in addition to an amount sufficient to recover underpaid wages.

17 **SECOND CAUSE OF ACTION**

18 ***Unpaid Missed Meal Breaks***

19 ***(Labor Code sections 226.7(a) and 512(a) and IWC Wage Order No. 9-2001 section 11)***

20 ***(By Plaintiff and Class Members Against all Defendants)***

- 21 54. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
22 herein, the material allegations set out in each and all previous paragraphs of this
23 Complaint.
- 24 55. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly
25 for any wages or penalty due to them under this article of the California Labor Code.
- 26 56. At all times herein set forth, Labor Code section 226.7 provides that no employer shall
27 require an employee to work during any meal period mandated by an applicable order of
28 the IWC.
57. At all times herein set forth, Labor Code section 512(a) provides that an employer may
not employ an employee for a work period of more than five (5) hours per day without
providing the employee with a meal period of not less than thirty (30) minutes, except

1 that if the total work period per day of the employee is not more than six (6) hours, the
2 meal period may be waived by mutual consent of both the employer and the employee.

3 58. At all times herein set forth, Labor Code section 512(a) further provides that an employer
4 may not employ an employee for a work period of more than ten (10) hours per day
5 without providing the employee with a second meal period of not less than thirty (30)
6 minutes, except that if the total hours worked is no more than twelve (12) hours, the
7 second meal period may be waived by mutual consent of the employer and the employee,
only if the first meal period was not waived.

8 59. The language of applicable IWC Order, section 11 relating to meal periods tracks the
9 language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd. 11.)

10 60. Defendants fostered a work environment where the taking of uninterrupted thirty (30)
11 minute meal breaks by its employees was essentially prohibited because Defendants were
12 more concerned about their profit margin, than its own employees' welfare. As such,
13 Plaintiff and Class Members could not take any thirty (30) minute uninterrupted meal
14 breaks without the risk of being reprimanded or terminated.

15 61. Because Defendants failed to afford proper meal periods, they are liable to Plaintiff and
16 Class Members for one hour of additional pay at the regular rate of compensation for
17 each workday that the proper meal periods were not provided, pursuant to Labor Code
section 226.7(b) and applicable IWC Wage Order 9-2001 section 11(B).

18 62. By violating Labor Code sections 226.7 and 512, and applicable Wage Order 9-2001
19 Section 11, Defendants are also liable to Plaintiff and Class Members for reasonable
20 attorneys' fees and costs under Labor Code Section 218.5.

21 **THIRD CAUSE OF ACTION**

22 ***Failure to Pay for All Overtime Wages Earned***

23 ***(Labor Code sections 510 and 1194 and IWC Wage Order No. 9-2001 section 3)***

24 ***(By Plaintiff and Class Members Against all Defendants)***

25 63. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
26 herein, the material allegations set out in each and all previous paragraphs of this
27 Complaint.
28

64. At all relevant times during the applicable limitations period, Plaintiff and Class Members have been non-exempt employees of Defendants and entitled to the benefits of Labor Code sections 510 and 1194 and the pertinent Wage Order.
65. Section 2(H) of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”
66. In relevant part, Section 3 of the Wage Order 9-2001 states: (A) Daily Overtime- General Provisions:
- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
- (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.
67. Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the

1 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
2 compensated at the rate of no less than twice the regular rate of pay for an employee. In
3 addition, any work in excess of eight hours on any seventh day of a workweek shall be
4 compensated at the rate of no less than twice the regular rate of pay of an employee.
5 Nothing in this section requires an employer to combine more than one rate of overtime
6 compensation in order to calculate the amount to be paid to an employee for any hour of
overtime work.”

- 7 68. With respect to overtime wages, the regular rate of pay under California law must include
8 “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
9 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
10 commissions and nondiscretionary bonuses. (See *Huntington Memorial Hosp. v. Superior*
11 *Court* (2005) 131 Cal App.4th 893, 904-05.)
- 12 69. During the relevant timeframe, Plaintiff and Class Members worked more than eight
13 hours a day and more than 40 hours a week and were not paid all the overtime wages they
14 were entitled to.
- 15 70. Plaintiff and Class Members have been damaged in a sum to be proven and request relief
16 as described below.

17 **FOURTH CAUSE OF ACTION**

18 ***Failure to Pay Minimum Wage and Pay for All Wages Earned***

19 ***(Labor Code sections 204, 1194 and 1197)***

20 ***(By Plaintiff and Class Members Against all Defendants)***

- 21 71. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
22 herein, the material allegations set out in each and all previous paragraphs of this
Complaint.
- 23 72. Labor Code section 204 requires California employers to pay employees for all wages
24 earned.
- 25 73. Defendants failed to compensate Plaintiff and Class Members for all hours worked,
26 including, but not limited to, the hours worked during their meal and rest breaks, as well
27 as overtime pay and additional hours worked off the clock, and for which they did not
28 receive the proper compensation under the law.

1 74. Plaintiff and Class Members have been damaged in a sum to be proven and requests
2 relief as described below.

3
4 **FIFTH CAUSE OF ACTION**

5 ***Failure to Maintain Accurate Payroll Records (Labor Code sections 226(a), 1174 and***
6 ***1198.5 and IWC Wage Order No. 9-2001 section 7)***

7 ***(By Plaintiff and Class Members Against all Defendants)***

8 75. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
9 herein, the material allegations set out in each and all previous paragraphs of this
10 Complaint.

11 76. Labor Code Section 226(a), applicable IWC such as Wage Order No. 9-2001, section
12 7(A), and Labor Code Section 1174 require employers to maintain accurate payroll
13 records and to provide semi-monthly or at the time of each payment of wages to furnish
14 each employee with a statement itemizing, among other things, the total hours worked by
15 the employee.

16 77. Plaintiff and Wage Statement Employees did not receive any wage statements from
17 Defendants. Plaintiff and Wage Statement Employees received a check on a weekly
18 basis. There was no paystub attached to the check or any description of the number of the
19 hours that each employee worked. Plaintiff was working from 3 a.m. to up to 8 p.m.,
20 without any overtime payment.

21 78. Defendants have violated Labor Code Sections 226(a) and 1174, 1198.5 and applicable
22 IWC wage order such as Wage Order No. 9-2001, section 7(A) by willfully failing to
23 keep required personnel and payroll records showing the actual hours worked each day
24 by Plaintiff and Class Members. Defendant failed to provide Plaintiff and Class Members
25 with a means of accurate timekeeping, including a means of clocking in and clocking out.
26 As a direct and proximate result of Defendants' failure to maintain accurate payroll
27 records, Plaintiff and Class Members have suffered economic harm as they have been
28 precluded from accurately monitoring the number of hours worked and thus seeking
payment for all hours worked, as well as for all the missed meal periods and rest breaks.

79. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as described below.

SIXTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

(Labor Code sections 201-203)

(By Plaintiff and Class Members Against all Defendants)

80. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

81. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter; unless the employee had given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Labor Code sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

82. During the relevant time period, Defendants failed to pay Plaintiff and Class Members, who are no longer employed by Defendant, their final paycheck (inclusive of compensation for all hours worked, and compensation for missed rest and meal breaks, and sick days) either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ in violation of Labor Code section 201 – 203.

83. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Failure to Pay for Sick Days

(Labor Code sections 246(a) and 248.5)

(By Plaintiff and Class Members Against all Defendants)

1 84. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in each and all previous paragraphs of this
3 Complaint.

4 85. Labor Code section 246(a) provides: (a) (1) An employee who, on or after July 1, 2015,
5 works in California for the same employer for 30 or more days within a year from the
6 commencement of employment is entitled to paid sick days as specified in this section.

7 86. Labor Code section 248.5(a) provides for this action and penalties.

8 87. Defendants failed and refused to pay Plaintiff and Class Members for their sick days.
9 Plaintiff and Class Members have been damaged in a sum to be proven and request relief
10 as described below.

11 **EIGHTH CAUSE OF ACTION**

12 ***Failure to Reimburse Required Business Expenses***

13 ***(Labor Code section 2802)***

14 ***(By Plaintiff and Class Members Against all Defendants)***

15 88. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
16 herein, the material allegations set out in each and all previous paragraphs of this
17 Complaint.

18 89. Labor Code section 2802 requires an employer to “indemnify his or her employee for all
19 necessary expenditures or losses incurred by the employee in direct consequence of the
20 discharge of his or her duties...”

21 90. As part of their job duties, Plaintiff and Class Members incurred necessary business
22 expenses including incurring substantial gas expenses. They also had to pay for bags to
23 carry and distribute the newspapers. Plaintiff was required to use his own cell phone to
24 perform his job duties for the Defendants.

25 91. All said expenses were necessary for Plaintiff and Class Members to fulfill their job
26 function for the Defendants.

27 92. Plaintiff and Class Members sought reimbursement of these necessary expenses incurred
28 at Defendants’ direction and with assurance of payment, but Defendants have
consistently refused to reimburse and indemnify for Plaintiff and Class Members for
these expenses.

1 93. Accordingly, for Plaintiff and Class Members have been deprived of legally required
2 reimbursement, and Defendants should be liable to for Plaintiff and Class Members for
3 these sums, plus attorney's fees, plus interest.

4 94. The monies retained by Defendants should be deemed for Plaintiff and Class Members'
5 monies, held in trust for Plaintiff and Class Members and subject to a proper claim for
6 reimbursement and disgorgement.

7 **NINTH CAUSE OF ACTION**

8 ***Willful Misclassification of an Individual as an Independent Contractor***

9 ***(In Violation of Labor Code section 226.8)***

10 ***(By Plaintiff and Class Members Against all Defendants)***

11 95. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
12 herein, the material allegations set out in each and all previous paragraphs of this
13 Complaint.

14 96. Labor Code section 226.8(a)(1) states: "It is unlawful for any person or employer to
15 engage in...¶[w]illful misclassification of an individual as an independent contractor."

16 97. California courts have used the "*Borello* test" to distinguish employees from independent
17 contractors, named after *S. G. Borello & Sons, Inc. v. Dep't of Indus. Rels.* (1989) 48
18 Cal.3d 341. "[T]he question of whether the carriers are employees or independent
19 contractors must be determined under the *Borello* test." (*Becerra v. McClatchy Co.*
20 (2021) 69 Cal.App.5th 913.)

21 98. The test set forth by the *Borello* Court identified several secondary factors: "(1) whether
22 there is a right to fire at will without cause; (2) whether the one performing services is
23 engaged in a distinct occupation or business; (3) the kind of occupation, with reference to
24 whether, in the locality, the work is usually done under the direction of the principal or by
25 a specialist without supervision; (4) the skill required in the particular occupation; (5)
26 whether the principal or the worker supplies the instrumentalities, tools, and the place of
27 work for the person doing the work; (6) the length of time for which the services are to be
28 performed; (7) the method of payment, whether by the time or by the job; (8) whether or
not the work is a part of the regular business of the principal; (9) whether or not the
parties believe they are creating an employer-employee relationship; (10) whether the

1 classification of independent contractor is bona fide and not a subterfuge to avoid
2 employee status; (11) the hiree's degree of investment other than personal service in his
3 or her own business and whether the hiree holds himself or herself out to be in business
4 with an independent business license; (12) whether the hiree has employees; (13) the
5 hiree's opportunity for profit or loss depending on his or her managerial skill; and (14)
6 whether the service rendered is an integral part of the alleged employer's
business." *Sotelo v. Medianews Group, Inc.* (2012) 207 Cal.App.4th 639, 656-657.

7 99. In the instant case, Plaintiff and other distributors 1) could be fired by Defendant ACI
8 LAST MILE CALIFORNIA LLC without cause; 2) they were not engaged in a distinct
9 occupation or business; (3), the work was usually done under the direction of Defendant
10 ACI LAST MILE CALIFORNIA LLC; (4) there was no skill required; (5) Defendant
11 ACI LAST MILE CALIFORNIA LLC supplied the newspapers; (6) Plaintiff and Class
12 Members had to work about 40 hours weekly for Defendant ACI LAST MILE
13 CALIFORNIA LLC; (7) Plaintiff and Class Members were paid weekly; (8) the work is a
14 part of the regular business of Defendant ACI LAST MILE CALIFORNIA LLC; (9)
15 Plaintiff and Class Members believed they were employees of Defendant ACI LAST
16 MILE CALIFORNIA LLC; (10) the classification of independent contractor is not bona
17 fide and not is a subterfuge to avoid employee status; (11) they are providing personal
18 service and had no independent business license; (12) they had no employees; (13) they
19 had no opportunity for profit or loss depending on their skill; and (14) the service
20 rendered is an integral part of Defendant ACI LAST MILE CALIFORNIA LLC's
business.

21 100. Under the *Borello* test, Plaintiff and the Class Members are clearly "employees" and not
22 "independent contractors."

23 101. Under Borello test, Defendant ACI LAST MILE CALIFORNIA LLC intentionally and
24 willfully misclassified Plaintiff and Class Members as independent contractors in
25 violation of Labor Code section 226.8(a). This misclassification was also part of a pattern
26 and practice that applied to all of the Class Members and the Aggrieved Employees, and
not just to Plaintiff.

27 102. Plaintiff and Class Members have been damaged in a sum to be proven and request relief
28 as described below

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(By Plaintiff and Class Members Against all Defendants)

103. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
104. California Business & Professions Code Section 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.
105. California Business & Professions Code Section 17204 allows “any person acting for the interest of itself, its members or the general public” to prosecute a civil action for violation of the UCL.
106. Beginning at an exact date unknown to Plaintiff and Class Members, but at least four years prior to the filing of this action, Defendants have improperly, fraudulently, and unlawfully failed to provide Plaintiff and Class Members with meal and rest breaks, failed to provide compensation for the missed meal and rest breaks, failed to provide compensation for all hours worked and all wages earned, failed to pay compensation for all over-time hours worked, failed to pay for sick days, failed to pay for necessary business expenses, and provided Plaintiff and Class Members with no accurate wage statements, and have thereby committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code Section 17200, by engaging in the following:
- i. Failing and refusing to provide meal periods to Plaintiff and Class Members and similarly situated employees;
 - ii. Failing to pay all accrued meal period break compensation to the employees;
 - iii. Failing and refusing to provide rest periods to Plaintiff and Class Members and similarly situated employees;
 - iv. Failing to pay all accrued rest period break compensation to the employees;
 - v. Failing to pay all accrued overtime compensation to the employees;
 - vi. Failing to pay for necessary business expenses;
 - vii. Failing to pay to the employees for all hours worked;

- 1 viii. Failing to maintain accurate payroll record and provide accurate itemized wage statement
2 to Plaintiff and Class Members and similarly situated employees;
3 ix. Failing to pay accurate wages for its employees' final paycheck;
4 x. Failing to accurately classify their employees;
5 xi. Failed to pay accrued sick days to Plaintiff and Class Members; and
6 xii. Failing to pay at least minimum wage for all hours worked.

7 The violation of these laws serves as unlawful, unfair, and/or fraudulent predicate acts
8 and practices for purposes of California Business and Professions Code Section 17200.

9 107. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent acts
10 and practices described herein, Defendants have received and continue to hold ill-gotten
11 gains belonging to Plaintiff and Class Members. As a direct and proximate result of
12 Defendants' unlawful business practices, Plaintiff and Class Members have suffered
13 economic injuries including, but not limited to, compensation for missed meal periods,
14 rest breaks, sick days, and over-time hours worked. Defendants have profited from their
15 unlawful, unfair, and/or fraudulent acts and practices in failing to provide meal period
16 and rest break compensation to Plaintiff and Class Members, as well as compensation for
17 over-time hours worked.

18 108. Plaintiff and Class Members are entitled to restitution pursuant to California Business &
19 Professions Code sections 17203 and 17208 for all meal period and rest break
20 compensation, unpaid wages and interest as of four years prior to the filing date of this
21 action.

22 109. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of
23 the California Labor Code pursuant to California Business & Professions Code Section
24 17202.

25 110. Plaintiff and Class Members' success in this action will enforce important rights affecting
26 the public interest. In this regard, Plaintiff and Class Members sue on behalf of
27 themselves and the general public. Plaintiff and Class Members seek and are entitled to
28 unpaid compensation, declaratory and injunctive relief, civil penalties, and any other
appropriate remedy.

111. Injunctive relief is necessary and appropriate to prevent Defendants from continuing and
repeating their unlawful, unfair and fraudulent business acts and practices alleged above.

1 112. In order to prevent Defendants from profiting and benefitting from their wrongful and
2 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the
3 profits and gains they have reaped and restore such profits and gains to the Plaintiff and
4 Class Members, from whom they were unlawfully taken.

5 113. Plaintiff and Class Members have assumed the responsibility of enforcement of the laws
6 and lawful claims specified herein. There is a financial burden incurred in pursuing this
7 action, which is in the public interest. Therefore, reasonable attorneys' fees are
8 appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.

9 114. By all of the said foregoing alleged conduct Defendants have committed, and are
10 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within
11 the meaning of Cal. Business & Professions Code Section 17200, et seq.

12 115. As a direct and proximate result of the unfair business practices described above, Plaintiff
13 and Class Members have suffered significant losses and Defendants have been unjustly
14 enriched.

15 116. Pursuant to California Business & Professions Code Section 17203, Plaintiff and Class
16 Members are entitled to: (a) restitution of money acquired by Defendants by means of
17 their unfair business practices, in amounts not yet ascertained but to be ascertained at
18 trial; (b) injunctive relief against defendants' continuation of their unfair business
19 practices, and (c) a declaration that defendants' business practices are unfair within the
20 meaning of the statute.

21 **ELEVENTH CAUSE OF ACTION**

22 ***Unlawful Discrimination Based on Cal. Govt. Code § 12940***

23 *(By Plaintiff VICENTE TORRIJOS CAMPOS, Individually, Against all Defendants)*

24 117. Plaintiff VICENTE TORRIJOS CAMPOS incorporates by reference and re-alleges, as if
25 fully stated herein, the material allegations set out in each and all previous paragraphs of
26 this Complaint.

27 118. At all times herein set forth, California Government Code § 12926(d) provides:
28 “‘Employer’ includes any person regularly employing five or more persons, or any
person acting as an agent of an employer, directly or indirectly, the state or any political
or civil subdivision of the state, and cities...”

- 1 119. Defendants employ more than five employees. Defendants violated Cal. Gov. Code §
2 12940. Defendants discriminated against Plaintiff due to his disability and necessitated
3 job restrictions and his age (59 years old at the time of termination), resulting in his
4 termination. As a result of Defendants' acts, Plaintiffs have suffered and will continue to
5 suffer damages, including lost wages, lost benefits, as well as other pecuniary and
6 physical and emotional injuries. The amount of Plaintiff's damages will be ascertained at
7 trial.
- 8 120. Plaintiff is legally protected from age discrimination and physical disability
9 discrimination, which includes those whose physical condition require medical treatment.
- 10 121. A few months prior to his termination, while he was working for Defendants, Plaintiff
11 was carrying a huge stack of newspapers when he felt a sharp pain in his abdomen. He
12 advised his supervisor, Agustin Telera, that day about what had happened, and Mr. Telera
13 advised him to be careful next time and to wear a support belt. As a result of this incident,
14 Plaintiff discovered he developed he had a hernia. He requested workers' compensation
15 benefits from his supervisor but was soon terminated thereafter.
- 16 122. In committing the foregoing acts, Defendants are guilty of oppression, fraud, and/or
17 malice under California Civil Code Section 3294, thereby entitling Plaintiff to punitive
18 damages in an amount to be proven at trial. Defendants' employees committed the acts
19 of oppression, fraud, and/or malice. Defendants had advance knowledge of each
20 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified
21 the wrongful conduct for which an award of punitive damages is sought. The advance
22 knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud
23 and/or malice, was committed by or on part of an officer, director, or managing agent of
24 each of the Defendants. Therefore, Plaintiff is entitled to punitive damages against
25 Defendants.
- 26 123. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
27 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
28 will continue to employ attorneys for the initiation and prosecution of this action.
Plaintiff has incurred and will continue to incur attorneys' fees and costs. Plaintiff is
entitled to an award of reasonable attorneys' fees and costs since Defendants

discriminated against Plaintiff due to his age and physical condition requiring medical treatment.

TWELFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff VICENTE TORRIJOS CAMPOS, Individually, Against all Defendants)

124. Plaintiff VICENTE TORRIJOS CAMPOS incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
125. “Public policy” has been defined broadly to mean “that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good.” (*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal. App. 2d 184, 188.) An employer discharging an employee’s employment based on the employee’s medical condition and age is a violation of Public Policy because “age discrimination” and “disability discrimination” are supported by either constitutional or statutory provisions; they inure to the benefit of the public at large rather than serving merely the interests of the individual; are articulated at the time of the discharge; and California's policy against age and disability discrimination is “substantial and fundamental.”
126. A few months prior to his termination, while he was working for Defendants, Plaintiff was carrying a huge stack of newspapers when he felt a sharp pain in his abdomen. He advised his supervisor, Agustin Telera, that day about what had happened, and Mr. Telera advised him to be careful next time and to wear a support belt. As a result of this incident, Plaintiff discovered he developed he had a hernia. He requested workers’ compensation from his supervisor but was soon terminated thereafter.
127. As of the date of the termination, Plaintiff was 59 years old. In addition, he was suffering from work-related injuries. Plaintiff demanded treatment and work accommodations due to the work injuries, but was consistently ignored by Defendant. Instead of providing medical treatment and work accommodations, Defendant terminated Plaintiff.
128. Plaintiff is informed and under the belief that his age (59 years old at the time of termination) and disability were also the causes of the Defendants’ discrimination against him, and that Defendants wished to replace him with younger and faster worker.

1 129. Therefore, Plaintiff alleges that Defendants have terminated his employment in violation
2 of Public Policy. Plaintiff alleges that as a direct and proximate result of Defendants'
3 wrongful conduct (Plaintiff's employment being terminated on the above-described basis);
4 Plaintiff has now sustained monetary damages and severe emotional distress in an
5 amount to be proven at trial.

6 130. Each of the wrongful and deliberated acts committed by Defendants, as herein alleged,
7 were acts that constitute oppression and malice because they were committed with the
8 sole intent to discharge Plaintiff from his employment due to his age, disability, and need
9 for medical treatment and work accommodations.

10 131. Plaintiff is informed and believes and thereon alleges that each of the oppressive and
11 malicious acts committed by Defendants, as herein above alleged, were committed and/or
12 ratified by Defendants and their directors, officers, managing employees, and therefore,
13 Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

14 **THIRTEENTH CAUSE OF ACTION**

15 ***Wrongful Termination-Retaliatory Termination [Cal. Govt. Code § 12940(h)]***

16 *(By Plaintiff VICENTE TORRIJOS CAMPOS, Individually, Against all Defendants)*

17 132. Plaintiff VICENTE TORRIJOS CAMPOS incorporates by reference and re-alleges, as if
18 fully stated herein, the material allegations set out in each and all previous paragraphs of
19 this Complaint.

20 133. Defendants retaliated against Plaintiff in the terms, conditions and existence of Plaintiff's
21 employment after Plaintiff opposed practices of Defendants forbidden by FEHA, Govt.
22 Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940, 12945.2
23 (employment discrimination). Defendants' retaliation violated Govt. Code § 12940,
24 including subsection (h).

25 134. During his employment, Plaintiff requested accommodations for his injury and disability.
26 Defendants retaliated against Plaintiff by terminating his employment.

27 135. Defendants' wrongful conduct proximately caused Plaintiff to suffer general and special
28 damages in an amount to be proven.

136. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement
and reimbursement of lost wages and benefits.

1 137. Plaintiff has been required to hire The Law Offices of Farrah Mirabel, and is entitled to
2 recover reasonable attorney fees.

3 138. Plaintiff alleges that Defendants' terminating him for asking for accommodations and
4 medical treatment due his work-related injuries was done with malice and oppression
5 because they were meant to retaliate against Plaintiff for having exercised his right for
6 work accommodations due to his disabilities. These oppressive and malicious acts, as
7 herein above alleged, were committed by Defendants and/or each of them through their
8 Directors, Officers, Managing Employees, were ratified by Defendants and each of them
at the time these acts were being committed.

9 139. Plaintiff is entitled to damages in an amount according to proof at trial and punitive
10 damages in an amount sufficient to deter and punish Defendants and each of them
11 pursuant to Civil Code § 3294.

12 **FOURTEENTH CAUSE OF ACTION**

13 ***Wrongful Termination-Failure to Accommodate [Cal. Govt. Code § 12940(m)]***

14 *(By Plaintiff VICENTE TORRIJOS CAMPOS, Individually, Against all Defendants)*

15 140. Plaintiff VICENTE TORRIJOS CAMPOS incorporates by reference and re-alleges, as if
16 fully stated herein, the material allegations set out in each and all previous paragraphs of
this Complaint.

17 141. Defendants failed to make reasonable accommodations for Plaintiff's disability, and
18 instead terminated his employment. This violated Govt. Code § 12940, including
19 subsection (m).

20 142. Defendants' wrongful conduct proximately caused Plaintiff to suffer general, special and
21 statutory damages in an amount to be proven. Plaintiff has been required to hire the Law
22 Offices of Farrah Mirabel, and is entitled to recover reasonable attorney fees.

23 143. Plaintiff alleges that Defendants' refusal to grant Plaintiff accommodations and
24 terminating his employment were acts that constitute oppression and malice because they
25 were committed with the sole intent of depriving Plaintiff of being employed and causing
26 injuries to Plaintiff. These oppressive and malicious acts, as herein above- alleged, were
27 committed by Defendants and/or each of them through their Directors, Officers,
28 Managing Employees, were ratified by Defendants and each of them at the time these
acts were being committed. Therefore, Plaintiff is entitled to damages in an amount

1 according to proof at trial and punitive damages in an amount sufficient to deter and
2 punish Defendants and each of them pursuant to Civil Code § 3294.

3 144. Plaintiff alleges that as a direct and proximate result of Defendants wrongful conduct
4 (Plaintiff being terminated based on his age, disability and not providing
5 accommodations), he has now sustained monetary damages and severe emotional
6 distress.

7 **FIFTEENTH CAUSE OF ACTION**

8 ***Wrongful Termination-Failure to Engage in the Interactive Process [Cal. Govt. Code §***
9 ***12940(n)]***

10 *(By Plaintiff VICENTE TORRIJOS CAMPOS, Individually, Against all Defendants)*

11 145. Plaintiff VICENTE TORRIJOS CAMPOS incorporates by reference and re-alleges, as if
12 fully stated herein, the material allegations set out in each and all previous paragraphs of
13 this Complaint.

14 146. Plaintiff had health issues, including work related injuries, and required work
15 accommodations. Defendants failed to engage in a timely, good faith, interactive process
16 with Plaintiff to determine effective, reasonable accommodations for his disability. This
17 violated Govt. Code § 12940, including subsection (n).

18 147. Defendants' wrongful conduct proximately caused Plaintiff to suffer general, special and
19 statutory damages in an amount to be proven. Plaintiff was forced to hire the Law Offices
20 of Farrah Mirabel, and is entitled to recover reasonable attorney fees.

21 148. Plaintiff alleges that Defendants refused to acknowledge and accept his need for
22 accommodations and treatment due to his disability. Plaintiff sought accommodations,
23 but instead was terminated. Such acts constitute oppression and malice because they were
24 committed with the sole intent of depriving Plaintiff of receiving proper medical care and
25 also deprive his of being employed and causing injuries to Plaintiff. These oppressive and
26 malicious acts, as herein above-alleged, were committed by Defendants and/or each of
27 them through their Directors, Officers, Managing Employees, were ratified by
28 Defendants and each of them at the time these acts were being committed. Therefore,
Plaintiff is entitled to damages in an amount according to proof at trial and punitive

1 damages in an amount sufficient to deter and punish Defendants and each of them
2 pursuant to Civil Code § 3294.

3 **SIXTEENTH CAUSE OF ACTION**

4 ***Civil Penalties Pursuant to Labor Code § 2699***

5 ***(PAGA penalties)***

6 ***(By Plaintiff Against all Defendants)***

7 149. Plaintiff incorporates by reference and re-allege, as if fully stated herein, the material
8 allegations set out in previous paragraphs of this Complaint.

9 150. Plaintiff on behalf of the people of the State of California and as “Aggrieved Employees”
10 acting as private attorney under the California Labor Code Private Attorneys General Act of
11 2004, §2698, *et seq.*, brings this action, on a representative basis. All current and former
12 employees of Defendant within one year of serving notice on the LWDA to the present are
13 aggrieved employees.

14 151. Defendants failed to comply with *Labor Code* requirements due to erroneous, willful and
15 intentional employment practices and policies. Plaintiff brings this representative action on
16 behalf of himself, all other similarly situated aggrieved employees, and the State of California,
17 based upon the claims articulated below. Plaintiff provided notice of their claims pursuant to
18 §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated
19 by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has
20 not provided any notice to Plaintiff following the exhaustion of the 65-day notice period
21 required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
22 penalties under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et seq.*

23 152. As a result of the actions alleged herein, Plaintiff seeks penalties under Labor Code sections
24 2698 and 2699 because of Defendant’s violation of Labor Code sections 98.6, 201-204, 210,
25 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2, 226.3, 226.7, 226.8, 233, 234, 246,
26 256, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5 and
27 2698-2699, 2699.5, 2802 and applicable IWC, which call for civil penalties.

28 153. Plaintiff and aggrieved parties request for Penalties Pursuant to *Labor Code* §2699:

- a. As applicable, for civil penalties under *Labor Code* §2699(f), for all violations of the *Labor Code* except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two

1 hundred dollars (\$200.00) for each aggrieved employee per pay period for
2 each subsequent violation;

3 b. As applicable, civil penalties under *Labor Code* §558 (in addition to and
4 entirely independent and apart from any other penalty provided in the *Labor*
5 *Code*), for violations of *Labor Code* §§500-556, in the amount of \$50 for
6 each underpaid aggrieved employee for each pay period the aggrieved
7 employee was underpaid in addition to an amount sufficient to recover
8 underpaid wages, and \$100 for each subsequent violation for each underpaid
9 employee for each pay period for which the employee was underpaid in
10 addition to an amount sufficient to recover underpaid wages;

11 c. As applicable, for civil penalties under *Labor Code* §1197.1 (in addition to
12 and entirely independent and apart from any other penalty provided in the
13 *Labor Code*), for violations of *Labor Code* §§1194 and 1197, in the amount
14 of \$100 for each underpaid aggrieved employee for each pay period the
15 aggrieved employee was intentionally underpaid in addition to an amount
16 sufficient to recover underpaid wages, and \$250 for each subsequent violation
17 for each underpaid aggrieved employees regardless of whether the initial
18 violation was intentionally committed in addition to an amount sufficient to
19 recover underpaid wages;

20 d. As applicable, for civil penalties under *Labor Code* §210 (in addition to and
21 entirely independent and apart from any other penalty provided in the *Labor*
22 *Code*), for each employee who is/was not paid wages in accordance with
23 *Labor Code* §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the
24 amount of a civil penalty of \$100 for each aggrieved employee per pay period
25 for each initial violation, and \$200 for each aggrieved employee per pay
26 period for each subsequent violation;

27 e. As applicable, for civil penalties under *Labor Code* §226.3 (in addition to and
28 entirely independent and apart from any other penalty provided in the *Labor*
Code), for each violation of *Labor Code* §226(a), in the amount of \$250 for
each aggrieved employee per pay period for each violation and \$1,000 for
each aggrieved employee per pay period for each subsequent violation; and

1 f. As applicable, for any and all additional civil penalties and sums as provided
2 by the *Labor Code* and/or other relevant statutes.

3 154. In addition, Plaintiff seeks seventy-five percent (75%) of all penalties obtained under
4 Labor Code §2699 to be allocated to the LWDA, for education of employers and
5 employees about their rights and responsibilities under the Labor Code, and twenty-
6 five percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

7 155. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant
8 to *Labor Code* §§2699(g)(1) and any other applicable statute.

9 156. Labor Code Section 2699.3 provides that "The aggrieved employee or representative
10 shall give written notice by certified mail to the Labor and Workforce Development
11 Agency and the employer of the specific provisions of this code alleged to have been
12 violated, including the facts and theories to support the alleged violation."

13 157. Plaintiff complied with Labor Code Section 2699.3. Written notice was served on
14 Defendant in accordance with the provision of Section 2699.3, on September 7, 2021 and
15 October 6, 2021. To date, the California Labor and Workforce Development Agency has not
16 provided Plaintiff with a notice of intent to investigate these violations, and more than 65 days
17 have since passed from the postmark date of the notice provided by Plaintiff. Attached to this
18 complaint as **Exhibit "B"**, is a copy of the proof of mailing. Moreover, Defendant has failed to
19 provide Plaintiff with notice that it has cured the violations, will cure the violations now, or
20 will cure the violations in the future. Consequently, pursuant to Labor Code Section
21 2699.3(a)(2)(A), Plaintiff may proceed and file a complaint for penalties pursuant to Labor
22 Code section 2699.

23 **REQUEST FOR JURY TRIAL**

24 Plaintiff and Class Members demand a trial by jury of all issues in this action
25 triable by a jury, including but not limited to issues of liability and damages.

26 **PRAYER FOR RELIEF**

- 27 1. That this action be certified as a class action;
28 2. That Plaintiff be appointed as the representative of the Class; and
3. That counsel for Plaintiff is appointed as Class counsel.
4. For general and special compensatory damages, according to proof;
5. For statutory damages;

6. For payments pursuant to California Labor Code section 226.8 and 226.7;
7. For payments pursuant to California Code of Civil Procedure section 338;
8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code sections 218.5 and 226(e);
9. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant to Labor Code section 218.6;
10. For civil penalties pursuant to Labor Code section 558;
11. For the disgorgement of any and all “unpaid wages” and incidental losses, according to proof;
12. For restitution of “unpaid wages” and pre-judgment interest from the day such amounts were due and payable;
13. For reasonable attorney's fees pursuant to Code of Civil Procedure section 1021.5;
14. For exemplary and punitive damages;
15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
16. For such other and further relief as the court deems just and proper.

DATED: December 4, 2021

LAW OFFICES OF FARRAH MIRABEL

BY: /S/ Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEY FOR PLAINTIFF VICENTE
TORRIJOS CAMPOS, on behalf of himself
and for all similarly situated persons

EXHIBIT “A”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 4, 2021

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202112-15552604
Right to Sue: TORRIJOS CAMPOS / ACI LAST MILE CALIFORNIA LLC

Dear Farrah Mirabel:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 4, 2021

RE: **Notice of Filing of Discrimination Complaint**

Dfeh Matter Number: 202112-15552604

Right to Sue: TORRIJOS CAMPOS / ACI LAST MILE CALIFORNIA LLC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 4, 2021

VICENTE TORRIJOS CAMPOS
14815 Praire Ave Apt 4
Lawndale, CA 90260

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202112-15552604
Right to Sue: TORRIJOS CAMPOS / ACI LAST MILE CALIFORNIA LLC

Dear VICENTE TORRIJOS CAMPOS:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 4, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

VICENTE TORRIJOS CAMPOS

DFEH No. 202112-15552604

Complainant,

vs.

ACI LAST MILE CALIFORNIA LLC
330 GOLDEN SHORE STE 410
LONG BEACH, CA 90802

Respondents

1. Respondent **ACI LAST MILE CALIFORNIA LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **VICENTE TORRIJOS CAMPOS**, resides in the City of **Lawndale**, State of **CA**.

3. Complainant alleges that on or about **June 22, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental), age (40 and over), family care or medical leave (cfra).

Complainant was discriminated against because of complainant's race, disability (physical or mental), age (40 and over), family care or medical leave (cfra) and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated.

Additional Complaint Details: ACI LAST MILE CALIFORNIA LLC, which provides print media and parcel distribution services doing business in Los Angeles County employed

1 Plaintiff, VICENTE TORRIJOS, beginning around August 1996 to June 22, 2021. Plaintiff
2 was employed as a driver and delivery person, whose duties included delivering over 15,000
3 newspapers in three days. He worked from 3:00 a.m. to anywhere between 6:00 p.m. to
4 8:00 p.m., three days per week, during Monday, Tuesday, and Wednesday. Plaintiff's last
5 pay rate was approximately \$790.00 per week. It was mandatory for the Plaintiff to make
6 deliveries to specific homes on specific days of the week. Omar was his supervisor for about
7 two years.

8 Defendant wrongfully terminated Plaintiff on June 22, 2021. Plaintiff was 59 years old at the
9 time of the termination and was experiencing pain from a work-related injury, carrying a
10 huge stack of newspapers, causing Plaintiff to suffer from a hernia. Even though Plaintiff
11 notified Defendant of his injury, Defendant failed and refused to provide Plaintiff with any
12 workers compensation benefits and medical treatment and/or work accommodation(s), and
13 instead Defendant wrongfully terminated Plaintiff without any notice.
14
15
16
17
18
19
20
21
22
23
24
25

1 VERIFICATION

2 I, **Farrah Mirabel**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 4, 2021, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **Los Angeles, CA**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT “B”

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

September 7, 2021

Via Online Filing with the LWDA & Certified Mail to Defendant

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

NATIONAL REGISTERED AGENTS, INC.
CT CORPORATION SYSTEM
ACI Last Mile California LLC
330 NORTH BRAND BLVD
GLENDALE, CA 91203

ACI Last Mile California LLC
330 GOLDEN SHORE STE 410
LONG BEACH CA 90802

In Re PAGA NOTICE: Campos Vicente Torrijos v. ACI Last Mile California LLC

Dear PAGA Administrator:

Our firm represents the interests of ***Campos Vicente Torrijos*** (Plaintiff), former employee of ***ACI Last Mile California LLC***. Plaintiff was employed by Defendant as laborer/driver and worked for over 25 years until June 22, 2021. He was misclassified as an independent contractor.

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both, and to the imposition of substantial penalties and other order and remedies against you and your company.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that LWDA investigate the claims in this letter and the labor code and wage order violations as listed below.

This office represents Plaintiff and a proposed group of current and former Aggrieved Employees of ACI Last Mile California LLC, or any entities of ACI Last Mile California LLC and its co-employers, successors in interest, and/or merged entities (“Defendants,”) in connection with Plaintiff’s individual or PAGA representative action claims for *inter alia* civil penalties.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendants’ employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Willful misclassification of employees as independent contractors by Defendants in violation of Labor Code 226.8;
2. failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon the absence of all hours worked and the accurate rates of pay on Defendants’ wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees ;
3. failure to pay employees all wages and premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210;
4. failure to provide timely duty-free rest periods within the first four (4) hours or major fraction thereof, and/or pay rest period premiums for late, on-duty or missed rest breaks in violation of Labor Code §§ 226.7 and 512 and Section 12 of the applicable IWC Wage Order;
5. failure to provide timely duty-free meal periods within the first five (5) hours or major fraction thereof, and/or pay meal period premiums for late, on-duty or missed meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
6. failure to pay all wages upon termination in violation of Labor Code Sections 201-203; and
7. statutory penalties under California’s Private Attorney General Act (“PAGA”) based upon the foregoing under Labor Code sections 2698 *et seq.*

In connection with his PAGA claims, Plaintiff seeks PAGA penalties from at least one year prior to the date of this Notice and ongoing (the “PAGA Period”). Plaintiff seeks to represent the following groups of aggrieved employees:

a. The “Aggrieved Employees”:

All Aggrieved Employees who were classified as 1099 independent contractors for tax purposes and whose wages were reported on an IRS Form 1099, instead of an IRS Form W2, and who worked for Defendant in California as “packers” during the PAGA period; .

i. The “Overtime Aggrieved Employees”:

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The “Rest Break Aggrieved Employees”:

All Aggrieved Employees who worked more than 3.51 hours in a shift for Defendants during the PAGA Period;

iii. The “Rest Break Aggrieved Employees”:

All Aggrieved Employees who worked more than 3.51 hours in a shift for Defendants during the PAGA Period;

iv. The “Wage Statement Aggrieved Employees”:

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

Plaintiff and the Aggrieved Employees were Misclassified as Independent Contractors

In 2018, the California Supreme Court in *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958, a case involving delivery drivers who were paid on an IRS Form 1099 basis, set forth the standard for determining whether an individual performing work is an independent contractor or an employee, as follows:

We find merit in the concerns noted above regarding the disadvantages, particularly in the wage and hour context, inherent in relying upon a multifactor, all the circumstances standard for distinguishing between employees and independent contractors. As a consequence, we conclude it is appropriate, and most consistent with the history and purpose of the suffer or permit to work standard in California's wage orders, to interpret that standard as: (1) placing the burden on the hiring entity to establish that the worker is an independent contractor who was not intended to be included within the wage order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to establish *each* of the three factors embodied in the ABC test — namely (A) that the worker is free from the control and direction of the hiring entity in connection with the

performance of the work, both under the contract for the performance of the work and in fact; *and* (B) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. [Citations].

The *Dynamex* decision was codified as AB-5 and it is now incorporated within Labor Code Section 2750.3 Code, effective January 1, 2020. Section 2750.3 codifying AB 5 applies retroactively to the situation of any misclassification prior to January 1, 2020. The standard is commonly referred to as the “ABC test.” Under the ABC Test, Defendants have the burden of establishing that Plaintiff and the Aggrieved Employees are independent contractors and not intended to be included within the wage order’s coverage. Further, Defendants must establish that Plaintiff and the Aggrieved Employees meet all three factors of the ABC Test, which as discussed below, they cannot meet.

A. Plaintiff and the Aggrieved Employees Were Subject to Defendants’ Direction and Control: Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees were free from the direction and control of the Defendant. At all times, Defendant retained and retains the right to control the method and manner of how Plaintiff and Aggrieved Employees perform their job duties and retained and retains all necessary control over Plaintiff and the Aggrieved Employees during their employment. Among other things, Plaintiff and Aggrieved Employees were required to follow detailed requirements imposed on them by Defendant governing the packaging of boxes. Plaintiff and Aggrieved employees had to follow Defendant’s delivery schedule to in distribute newspapers. Plaintiff and aggrieved employees were not free in their position and were required to use the specific requirements of Defendant to fulfill their job duties. Therefore, under the A factor of the ABC test, Plaintiff and the Aggrieved Employees were misclassified as independent contractors. Based upon the case law cited above and Section 2750.3 of the Labor Code, Plaintiff and the aggrieved employees were subject to control and were thus employees.

B. Plaintiff and the Aggrieved Employees Performed Work Within the Usual Course of the Defendants’ Business: As described by the Court in *Dynamex*, the work performed within the course of the defendants business is described thusly, “Workers whose roles are most clearly comparable to those of employees include individuals whose services are provided within the usual course of the business of the entity for which the work is performed and thus who would ordinarily be viewed by others as working in the hiring entity's business and not as working, instead, in the worker's own independent business.” *Dynamex Operations W. v. Superior Court, supra*, 4 Cal. 5th at 959. By way of example, the Supreme Court held that:

Thus, on the one hand, when a retail store hires an outside plumber to repair a leak in a bathroom on its premises or hires an outside electrician to install a new electrical line, the services of the plumber or electrician are not part of the store's usual course of business and the store would not

reasonably be seen as having suffered or permitted the plumber or electrician to provide services to it as an employee. [citations] On the other hand, when a clothing manufacturing company hires work-at-home seamstresses to make dresses from cloth and patterns supplied by the company that will thereafter be sold by the company [citations], or when a bakery hires cake decorators to work on a regular basis on its custom-designed cakes (*cf., e.g., Dole v. Snell* (10th Cir. 1989) 875 F.2d 802, 811), the workers are part of the hiring entity's usual business operation and the hiring business can reasonably be viewed as having suffered or permitted the workers to provide services as employees. In the latter settings, the workers' role within the hiring entity's usual business operations is more like that of an employee than that of an independent contractor. *Id.* at 959-960.

Here, Defendants cannot establish that Plaintiff and the Aggrieved Employees perform work outside Defendants' normal course of business. To the contrary, Plaintiff and the Aggrieved Employees were performing work completely within Defendant normal course of business, since Defendant is in the business of distribution of newspapers and Plaintiff and the Aggrieved Employees were employed to distribute Defendant's items.

For this additional reason, under the B factor of the ABC test, Plaintiff and the Aggrieved Employees were misclassified erroneously as independent contractors. Based upon the case law cited above and Section 2750.3 of the Labor Code, Plaintiff and the aggrieved employees were subject to control and were thus employees.

C. Plaintiff and the Aggrieved Employees Were Not Customarily Engaged in an Independently Established Trade, Occupation, Or Business of the Same Nature as the Work Performed: As with A and B of the ABC Test, Defendants cannot establish that Plaintiff and the Aggrieved Employees are or were employees customarily engaged in an independent occupation, or business. As the Supreme Court in *Dynamex* held:

As a matter of common usage, the term "independent contractor," when applied to an individual worker, ordinarily has been understood to refer to an individual who *independently* has made the decision to go into business for himself or herself. [citations] Such an individual generally takes the usual steps to establish and promote his or her independent business—for example, through incorporation, licensure, advertisements, routine offerings to provide the services of the independent business to the public or to a number of potential customers, and the like. When a worker has not independently decided to engage in an independently established business but instead is simply designated an independent contractor by the unilateral action of a hiring entity, there is a substantial risk that the hiring business is attempting to evade the demands of an applicable wage order through misclassification. A company that labels as independent contractors a class of workers who are not engaged

in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order. The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself. *Dynamex Operations W. v. Superior Court*, supra, 4 Cal. 5th at 962.

Here, the packaging crew, including Plaintiff and the Aggrieved Employees, are not and were not customarily considered part of an independently established business. Indeed, Plaintiff and the Aggrieved employees only worked for Defendant at Defendant's direction and per defendant's delivery schedule. Plaintiff and the Aggrieved employees were required solely responsible to distribute Defendant's newspapers and no others'. Plaintiff did not work for any other entities and only worked for Defendant.

Thus, under the three elements of the ABC test, Plaintiff and the Aggrieved Employees are clearly "employees" and not "independent contractors." *Dynamex Operations West, Inc., v. Superior Court* (2018) 4 Cal. 5th 903, 956-958; *See, also Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. App. 4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014) (employer's right to control detail of drivers' work support finding of employer-employee relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014) (the drivers were employees as a matter of law where FedEx controlled the times drivers worked and controlled aspects of when packages would be delivered).

Since *ACI Last Mile California LLC* cannot meet any part of the ABC test, and particularly since the B prong so clearly militates against *ACI Last Mile California LLC* misclassification of Plaintiff and the Aggrieved Employees, it is clear that *ACI Last Mile California LLC* intentionally and willfully misclassified Plaintiff and Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a). This misclassification was also part of a pattern and practice that applied to all of the members of the Aggrieved Employees, and not just to Plaintiff.

DEFENDANTS' REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten-minute duty-free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiff and the Rest Break Aggrieved Employees were not provided their timely ten-minute duty-free rest breaks. Furthermore, Plaintiff, the Rest Break Aggrieved Employees and the Misclassified Aggrieved Employees worked for Defendant distributing 5500 newspapers per day which was often understaffed, so that Plaintiff, the Rest Break and Meal Break Aggrieved Employees were under time pressures to finish their distribution tasks on time, which was often meal break and rest break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Plaintiff and Wage Statement Employees did not receive any wage statements from Defendant. Plaintiff and Wage Statement Employees received a check on a weekly basis. There was no paystub attached to the check or any description of the number of the hours that each employee worked. Plaintiff was working from 3 a.m. to up to 8 p.m., 3 days a week without any overtime payment.

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the Wage Statement Aggrieved Employees' regular wages and rest break premiums, the pay document issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned,

or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiff and the Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid compensation for their time spent on overtime work and statutory rest breaks. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage statements did not "give an accurate report of the hours plaintiff worked, at least not on its face"); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Plaintiff and Wage Statement Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.").

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semi-monthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendant’s misclassification of Plaintiff and the other Wage Statement Aggrieved Employees,² Defendants violated Labor Code § 204 by failing to pay all

¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”]. The issue is

wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff, the Aggrieved Employees and the Misclassified employees are entitled to recover penalties under Labor Code § 210 through PAGA.

DEFENDANT’S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant’s faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendant violated Labor Code § 203, for those employees whose association ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiff and Waiting Time Aggrieved Employees did not receive their last paystubs within 72 hours of their termination. Also, Plaintiff was not paid for his last week of his work for Defendant.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleged violations as to any locations or employees who worked at any time in the state of California.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the

currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

Plaintiff individually, on a class basis, and on behalf of the Aggrieved Employees as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **October 10, 2021**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

October 6, 2021

Via Online Filing with the LWDA & Certified Mail to Defendant

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

NATIONAL REGISTERED AGENTS, INC.
CT CORPORATION SYSTEM
ACI Last Mile California LLC
330 NORTH BRAND BLVD
GLENDALE, CA 91203

ACI Last Mile California LLC
330 GOLDEN SHORE STE 410
LONG BEACH CA 90802

In Re AMENDED PAGA NOTICE: Campos Vicente Torrijos v. ACI Last Mile California LLC

LWDA-CM-843794-21

Dear PAGA Administrator:

Our firm represents the interests of **Campos Vicente Torrijos** (Plaintiff), former employee of **ACI Last Mile California LLC**. Plaintiff was employed by Defendant as laborer/driver and worked for over 25 years until June 22, 2021. He was misclassified as an independent contractor.

On September 7, 2021 we filed a PAGA Notice. Since then, Court of Appeal has held that:

“We agree that the question of whether the carriers are employees or independent contractors must be determined under the *Borello* test.”

Becerra v. McClatchy Co., No. F074680, 2021 WL 4472625, at *1 (Cal. Ct. App. Sept. 30, 2021)

Therefore, we are amending our PAGA letter to set forth the correct criteria for holding Defendant liable for violating labor code.

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1), and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both, and to the imposition of substantial penalties and other order and remedies against you and your company.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that LWDA investigate the claims in this letter and the labor code and wage order violations as listed below.

This office represents Plaintiff and a proposed group of current and former Aggrieved Employees of ACI Last Mile California LLC, or any entities of ACI Last Mile California LLC and its co-employers, successors in interest, and/or merged entities (“Defendants,”) in connection with Plaintiff’s individual or PAGA representative action claims for *inter alia* civil penalties.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendants’ employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Willful misclassification of employees as independent contractors by Defendants in violation of Labor Code 226.8;
2. failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon the absence of all hours worked and the accurate rates of pay on Defendants’ wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees ;
3. failure to pay employees all wages and premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210;
4. failure to provide timely duty-free rest periods within the first four (4) hours or major fraction thereof, and/or pay rest period premiums for late, on-duty or missed rest breaks in violation of Labor Code §§ 226.7 and 512 and Section 12 of the applicable IWC Wage Order;

5. failure to provide timely duty-free meal periods within the first five (5) hours or major fraction thereof, and/or pay meal period premiums for late, on-duty or missed meal breaks in violation of Labor Code §§ 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
6. failure to Keep Records, Improper Wage Statements in Violation of Labor Code § 1174, 1198.5 and 226.
7. failure to pay all wages upon termination in violation of Labor Code Sections 201-203;
8. failure to Pay Minimum Wages in Violation of Labor Code §1194 & §1197;
9. failure to Pay All Overtime Worked in Violation of Labor Code §510 and 1194, 1198;
10. failure to reimburse employees for business expenses in violation of Labor Code Section 2802; and
11. statutory penalties under California's Private Attorney General Act ("PAGA") based upon the foregoing under Labor Code sections 2698 et seq.

In connection with his PAGA claims, Plaintiff seeks PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All Aggrieved Employees who were classified as 1099 independent contractors for tax purposes and whose wages were reported on an IRS Form 1099, instead of an IRS Form W2, and who worked for Defendant in California as "packers" during the PAGA period; .

i. The "Overtime Aggrieved Employees":

All Aggrieved Employees who worked more than 8 hours in a workday or more than 40 hours in a workweek for Defendants during the PAGA Period;

ii. The "Rest Break Aggrieved Employees":

All Aggrieved Employees who worked more than 3.51 hours in a shift for Defendants during the PAGA Period;

iii. The "Meal Break Aggrieved Employees":

All Aggrieved Employees who worked more than 5 hours in a shift for Defendants during the PAGA Period;

iv. The "Wage Statement Aggrieved Employees":

All Aggrieved Employees who were issued one or more wage statements from Defendants during the PAGA Period;

v. The “Business Expenses Aggrieved Employees”:

All Aggrieved Employees who were not reimbursed for their expenses by Defendants during the PAGA Period;

vi. The “Minimum Wage Aggrieved Employees”:

All Aggrieved Employees who were not reimbursed for their expenses by Defendants during the PAGA Period;

vii. The “Not Paid Upon Termination Aggrieved Employees”:

All Aggrieved Employees who were not paid correctly upon termination, by Defendants during the PAGA Period;

Plaintiff and the Aggrieved Employees were Misclassified as Independent Contractors

There are 14 secondary factors derived from *Borello*. (See *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1064, fn. 14, 48 Cal.Rptr.3d 563 [“These factors substantially include: (1) whether there is a right to fire at will without cause; (2) whether the one performing services is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the services are to be performed; (7) the method of payment, whether by the time or by the job; (8) whether or not the work is a part of the regular business of the principal; (9) whether or not the parties believe they are creating an employer-employee relationship; (10) whether the classification of independent contractor is bona fide and not a subterfuge to avoid employee status; (11) the hiree's degree of investment other than personal service in his or her own business and whether the hiree holds himself or herself out to be in business with an independent business license; (12) whether the hiree has employees; (13) the hiree's opportunity for profit or loss depending on his or her managerial skill; and (14) whether the service rendered is an integral part of the alleged employer's business.”].)

Here, Plaintiff and other distributors 1) could be fired by **ACI Last Mile California LLC** without cause; 2) they were not engaged in a distinct occupation or business; (3), the work was usually done under the direction of **ACI Last Mile California**; (4) there was no skill required; (5) **ACI Last Mile California** supplied the newspapers; (6) they had to work about 40 hours a week for **ACI Last Mile California**; (7) they were paid

weekly; (8) the work is a part of the regular business of **ACI Last Mile California**; (9) they believed they were employees of **ACI Last Mile California**; (10) w the classification of independent contractor is not bona fide and not is a subterfuge to avoid employee status; (11) they are providing personal service and had no independent business license; (12) they had no employees; (13) they had no opportunity for profit or loss depending on their skill; and (14) the service rendered is an integral part of the **ACI Last Mile California** business.

Thus, under the Borello test, Plaintiff and the Aggrieved Employees are clearly “employees” and not “independent contractors.”

Since *ACI Last Mile California LLC* cannot meet any part of the Borello test, it is clear that *ACI Last Mile California LLC* intentionally and willfully misclassified Plaintiff and Aggrieved Employees as independent contractors in violation of Labor Code § 226.8(a). This misclassification was also part of a pattern and practice that applied to all of the members of the Aggrieved Employees, and not just to Plaintiff.

DEFENDANTS’ REST PERIOD VIOLATIONS

Under California law, employees are entitled to ten-minute duty-free rest breaks for each 4 hours of work, or major fraction thereof. See the applicable IWC Wage Order, Section 12 and Labor Code section 226.7.

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time or the proper timing for rest breaks called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Plaintiff and the Rest Break Aggrieved Employees were not provided their timely ten-minute duty-free rest breaks. Furthermore, Plaintiff, the Rest Break Aggrieved Employees and the Misclassified Aggrieved Employees worked for Defendant distributing 5500 newspapers per day which was often understaffed, so that Plaintiff, the Rest Break and Meal Break Aggrieved Employees were under time pressures to finish their distribution tasks on time, which was often meal break and rest break-preclusive.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Plaintiff and Wage Statement Employees did not receive any wage statements from Defendant. Plaintiff and Wage Statement Employees received a check on a weekly basis. There was no paystub attached to the check or any description of the number of the hours that each employee worked. Plaintiff was working from 3 a.m. to up to 8 p.m., 3 days a week without any overtime payment.

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the Wage Statement Aggrieved Employees' regular wages and rest break premiums, the pay document issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Defendants' failure to furnish accurate itemized wage statements has caused Plaintiff and the Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed and not paid compensation for their time spent on overtime work and statutory rest breaks. *See Cicairos v. Summit Logistics*, 133

Cal.App.4th 949, 954 (“If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met”); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 960-961 (2005) (reversing summary judgment for defendants where wage statements did not “give an accurate report of the hours plaintiff worked, at least not on its face”); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Plaintiff and Wage Statement Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab.

Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).¹

DEFENDANTS’ FAILURE TO PAY WAGES ON A TIMELY BASIS

Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semi-monthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

Due to Defendant’s misclassification of Plaintiff and the other Wage Statement Aggrieved Employees,² Defendants violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above, Plaintiff, the Aggrieved Employees and the Misclassified employees are entitled to recover penalties under Labor Code § 210 through PAGA.

¹ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7-9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

² Courts have routinely found that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3-4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”). The issue is currently before the California Supreme Court in the *Naranjo* case. *See Naranjo v. Spectrum Security Services, Inc.*, Cal. Supreme Court Case No. S258966.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, including its failure to pay for overtime wages and rest period premiums, Defendant violated Labor Code § 203, for those employees whose association ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment. Moreover, Plaintiff and Waiting Time Aggrieved Employees did not receive their last paystubs within 72 hours of their termination. Also, Plaintiff was not paid for his last week of his work for Defendant.

This notice is hereby given to and is made against Defendants, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of those alleged violations as to any locations or employees who worked at any time in the state of California.

DEFENDANT'S FAILURE TO REIMBURSE EMPLOYEES FOR THEIR BUSINESS EXPENSES

In addition, Defendant violated Labor Code section 2802 and the IWC Wage Orders, by failing to pay and indemnify Plaintiff and the non-exempt employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of Defendant.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually, on a class basis, and on behalf of the Aggrieved Employees as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by **November 10, 2021**, so that we may discuss an informal discovery plan and the possibility of early mediation.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

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:

ACI Last Mile California LLC
330 Eviden Shore Ste 410
Long Beach, CA 90802



9590 9402 2521 6306 1478 69

2. Article Number (Transfer from service label)

7013 0600 0001 8564 5956

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

1 Mail Restricted Delivery
500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING#



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 2521 6306 1478 69

United States
Postal Service

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

Law Offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077

Re: Page Notice: Campos Vicente Torrijas v.
Att Last Mile California



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:

National Registered Agents Inc.
CT Corporation System
ACI Last mile California 2
330 North Brand Blvd.
Glendale, CA 91203



9590 9402 2521 6306 1478 76

2. Article Number (Transfer from service label)

7013 0600 0001 8564 5949

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

NDS

C. Date of Delivery

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

SEP 13 2021

Delivery Service

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
- ☐ Registered Mail®
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

(over 500)

USPS TRACKING #

SANTA CLARITA CA 913



18 SEP 2021 PM 1 L

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

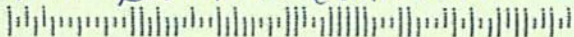
9590 9402 2521 6306 1478 76

United States
Postal Service

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

Law Offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077

Re: PagandHio: Campos Vicente Torrijos v.
ACT Last Mile California LLC.



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:

ACI Last Mile CA LLC.
330 Golden Shore St. 410
Long Beach, CA 90802



9590 9402 6286 0274 6938 76

2. Article Number (Transfer from service label)

7020 0640 0001 2647 4261

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

ACI

☐ Agent☐ Addressee

B. Received by (Printed Name)

TH - C - 19

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☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

1 Mail

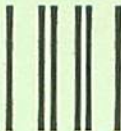
1 Mail Restricted Delivery

300)

USPS TRACKING #



9590 9402 6286 0274 6938 76



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

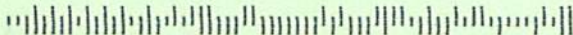
• Sender: Please print your name, address, and ZIP+4® in this box •

Law Offices of Farrah Mirabel

1070 Stradella Rd.

Los Angeles, CA 90077

Re: Amended Paga Notice: Carlos Vicente
Torrijos v. ACT Last Mile CA LLC.



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:

National Registered Agents, Inc.
 CT Corporation System
 ACI Last Mile California LLC.
 330 North Brand Blvd.
 Glendale, CA 91203



9590 9402 6286 0274 6938 83

2. Article Number (Transfer from service label)

7020 2450 0000 7183 7299

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

NDS

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

OCT 13 2021

Delivery Service

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
- ☐ Registered Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 6286 0274 6938 83

United States
Postal Service

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

LAW offices of Farrah Mirabel
1070 Stradella Rd.
LOS Angeles, CA 90077

Re: Amended PAGA Notice: Campos Vicente Torrijos
v. ACT Las Mile California LLC.

