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Attorneys for Plaintiffs SUSANA ACOSTA and HAROLD FOX, individually and on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

LAPHILL KNOX, individually and on behalf of all other aggrieved employees, Plaintiff, v. EXPRESS MESSENGER SYSTEMS, INC. dba ONTRAC, a Delaware Corporation, and DOES 1-50, inclusive, Defendants.	Case No.: CIV-DS-1932323 Assigned For All Purposes To: Judge: Hon. Gilbert Ochoa Dept.: S-26 **DECLARATION OF CHRISTINA M. LUCIO IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA REPRESENTATIVE ACTION SETTLEMENT** Date: January 9, 2023 Time: 10:00 AM Complaint Filed: October 28, 2019

I, Christina M. Lucio, declare as follows:

1. I am an individual over the age of 18. I am Of Counsel to the Law Firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiffs SUSANA ACOSTA AND HAROLD FOX ("Plaintiffs" or "Class Representatives"), who filed this Class Action on behalf of herself and all others similarly situated current and former hourly non-exempt employees who have worked for Defendants EXPRESS MESSENGER SYSTEMS, INC. dba ONTRAC ("Defendant") (with Plaintiffs, the "Parties"). I have been an attorney on this case since its inception. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. I submit this Declaration in support of Plaintiffs' Motion for Approval of PAGA Representative Action Settlement (the "Approval Motion"), which is filed concurrently herewith, along with the Memorandum of Points and Authorities. Attached to the Declaration of Launa Adolph as **Exhibit A** is a true and correct copy of the executed PAGA Representative Action Agreement entered by the Parties, including exhibits thereto, which the parties ask the Court to approve (the "Agreement" or "Settlement Agreement").

3. I have reviewed the Declaration of Launa Adolph submitted concurrently herewith and hereby incorporate the statements and conclusions therein.

4. On or about September 20, 2016, Plaintiff Acosta sent notice to the LWDA of her intent to pursue a representative PAGA action against Defendant on behalf of herself and the State of California as well as on behalf of other allegedly aggrieved current and former employees. The LWDA did not provide a response.

5. On March 6, 2017, Acosta filed a complaint against Defendant which asserted claims for: (1) Violation of the Fair Labor Standards Act, 29 U.S.C. section 201 et seq.; (2) failure to pay overtime wages; (3) failure to pay minimum wages; (4) failure to provide meal periods; (5) failure to authorize and permit rest periods; (6) unlawful wage deductions; (7) failure to indemnify for necessary business expenses; (8) failure to timely pay wages due at termination or resignation; (9) violations of the unfair competition law; (10) penalties under the Private Attorneys' General

Act ("PAGA") (the "*Acosta* Action"). Defendant filed an answer on April 18, 2017. On October 4, 2019, Acosta filed a First Amended Complaint ("FAC") alleging a single cause of action under the PAGA. Defendant filed an answer to the FAC on November 15, 2019. Attached hereto as **Exhibit B** is a true and correct copy of the initial notice submitted by Acosta.

6. On August 14, 2019, Knox sent notice to the LWDA of her intent to pursue a representative PAGA action against Defendant on behalf of herself and the State of California as well as on behalf of other allegedly aggrieved current and former employees. The LWDA did not provide a response.

7. On October 28, 2019, Knox filed her lawsuit against Defendant in San Bernardino Superior Court, alleging a single cause of action under PAGA (the "*Knox* Action"). On December 24, 2019, Defendant filed an answer to Knox's complaint.

8. On August 17, 2020, Knox filed a First Amended Complaint (the "FAC") which added Acosta as a named plaintiff in the *Knox* Action and, pursuant to a tolling agreement between Acosta and Defendant, asserted all claims asserted in *Acosta v. Express Messenger Systems, Inc.*, Central District of California, Case No. 8:17-cv-00391-DOC-JDE (the "*Acosta* Action") during the relevant time period, and to clarify the intent of the parties to continue the *Acosta* Action. Defendant filed an answer to the FAC on September 16, 2020.

9. On or about November 24, 2021, Plaintiff Fox sent notice to the LWDA of his intent to pursue a representative PAGA action against Defendant on behalf of herself and the State of California as well as on behalf of other allegedly aggrieved current and former employees. The LWDA did not provide a response. Attached hereto as **Exhibit C** is a true and correct copy of the notice submitted by Fox.

10. Pursuant to the stipulation of the Parties, a Second Amended Complaint adding Fox as a named plaintiff was filed on July 27, 2022.

<u>Experience</u>

11. In 2003, I graduated magna cum laude from the University of California, Riverside with a Bachelor of Arts Degree. Following graduation, I attended the University of Southern

California, Gould School of Law (USC Law School). At various points during law school, I worked with the USC Post-Conviction Justice Project, the Western Center for Disability Rights and the Barrister's Domestic Violence Clinic. During the Summer of 2005, I was a law clerk for the Law Offices of Bruce Austin (Safeco Insurance). In 2007, while a full-time law student, I was also a Judicial Extern for the Honorable Sandra Ikuta, United States Court of Appeals, Ninth Circuit. Thereafter, in 2007, I graduated from the USC Law School. The same year, I was admitted to practice law in the State of California.

12. Since I was admitted to practice law, I have litigated a wide variety of matters on both the plaintiff and defense side. Much of my early experience involved the litigation of general business and labor & employment matters on an individual and class-wide basis. I assisted with the representation of both employers and employees in various capacities, and assisted employers on issues related to compliance with employment laws.

13. Since 2012, my work has largely been focused on individual employment litigation and complex wage and hour class actions. In my practice as a class action plaintiffs' attorney, I have been involved in litigating, mediating and settling numerous wage and hour class actions dealing with class sizes ranging from several hundred to several thousand class members resulting in settlements ranging from six figures to multimillion dollar settlements.

14. Since 2015, I have also been Of Counsel to the law firm of James Hawkins APLC.

15. I have successfully litigated over dozens of class and PAGA actions with James Hawkins APLC as one of the counsels of record, including without limitation:

a. *Smith v. Space Exploration Technologies Corp.*, Los Angeles Superior Court, Case No. BC55429;

b. *Placencia v. Amcor Packaging Distribution, Inc.,* Orange County Superior Court, Case No. 30-2013-00694012-CU-OE-CXC;

c. *Trani v. Lisi Aerospace, et al.,* Los Angeles Superior Court, Case No. BC495527;

d. *Galvan v. Goodwin Co.*, Orange County Superior Court, Case No. 30-2013-00637062-CU-OE-CXC;

e. *Reyes v. Bristol Fiberlite*, Orange County Superior Court, Case No. 30-2013-00653425-CU-OE-CXC;

f. *Gutierrez v. HMT Tank*, USDC Central Dist., Case No. CV14-1967-CAS(MANx);

g. *Williams v. Il Fornaio America Corp.*, Sacramento County, 34-2011-0009616;

h. *Aguilar v. 7-Eleven, Inc*., Orange County, Case No. 30-2009-002687141-CU-OE-CXC;

i. *Madrigal v. Huntington Beach Market Broiler, Inc.*, Orange County, Case No. 30-2012-00611260;

j. *Vang v. Jazz Semiconductor, Inc.*, Orange County, Case no. 30-2011-00460278;

k. *Vigueras v. Red Robin, Intl.,* C.D. Cal. Case No. 8:17-cv-01422-JVS (DFMx);

l. *Mendez v. Liberty Glass Fabricators, Inc.,* Riverside County Case No. RIC1800119;

m. *Aguilar v. LDI Mechanical, Inc.,* Riverside County Case No. RIC1610019.

16. I was also lead trial counsel in a federal court jury trial in a wage and hour class action, which resulted in a $8.5 million settlement. Vigueras v. Red Robin Int'l, No. SACV 17-1422 JVS (DFMx), 2020 U.S. Dist. LEXIS 262135 (C.D. Cal. Dec. 2, 2020).

17. I am currently litigating at least thirty other wage and hour class and PAGA actions in State and Federal courts in the state of California.

18. Based on our experience, we consider ourselves experienced and qualified to evaluate the claims and viability of the defenses. Based on the history of this case and given our firm's extensive experience as class and representative action employment and wage and hour litigators, it is our view that the settlement is fair, reasonable, and adequate, and in the best interest of the State of California, and the Aggrieved Employees.

19. I have no conflicts of interest with the PAGA Representatives. I am not related to any representative Plaintiff. I have not previously represented Defendant in any matter.

Attorney’s Fees and Costs

20. The Settlement provides for attorney’s fees and costs to Plaintiffs’ Counsel in an amount up to one-third of the Maximum Settlement Amount, for a maximum fees award of $2,266,666.67,

plus reasonable and actual litigation expenses not to exceed $30,000.00, which includes costs for, among other things, copying and faxing, postage, mileage, court filing and service, expert data analysis, and the mediations.

21. Plaintiffs' Counsel has expended a significant amount of time litigating the case to achieve the excellent result on behalf of the Representative Group Members, approximately 460 hours for the attorneys and paralegals of James Hawkins APLC, including Mr. Hawkins and I. These hours were spent on the following tasks: investigating the claims and Plaintiffs; interviewing Plaintiffs and reviewing documents provided by them; drafting the complaint and amended complaint; drafting notice documents to the LWDA and responding to inquiries from the LWDA re the claims; preparing for and attending court hearings; drafting and responding to written discovery, including interrogatories, requests for production, requests for admission, and form and employment interrogatories; drafting a Person Most Qualified Deposition Notice; meeting and conferring regarding Defendants' responses, interviewing witnesses; meeting and conferring with Defendant's counsel to obtain relevant documents and information; reviewing time and payroll records and other employment records produced by Defendant; retaining consultants to analyze time and payroll data; working with the experts/consultants to analyze the data provided; performing legal research regarding Plaintiffs' claims and Defendant's defenses thereto; drafting a mediation brief and preparing a damages analysis prior to each of the mediations; attending two private mediation sessions; negotiating, drafting, and revising the Settlement Agreement and Release of PAGA Claims; and drafting the Motion for Approval of PAGA Settlement and accompanying documents. In addition, Plaintiffs' counsel spent a number of hours litigating the predecessor federal court action, including participating in the Rule 26 conference, preparing the Rule 26 report, meeting and conferring regarding the arbitration-related issues and the arbitration agreements, and attending hearings before the federal court.

22. To date, James Hawkins, APLC has incurred actual costs in the amount of $16,176.23 for filing fees, mediation fees, court calls, service fees, expert analysis, and LWDA submission fees . These costs were reasonably incurred in prosecuting this action on behalf of the State of California

and the Aggrieved Employees. Attached hereto as **Exhibit D** is a true and correct copy of the cost detail report for James Hawkins APLC.

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

Executed on this 13th day of December, 2022 at Encinitas, California.

Christina M. Lucio, Esq.

EXHIBIT B

JAMES *JH* HAWKINS
ATTORNEYS AT LAW

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200, FACSIMILE (949) 387-6676

September 20, 2016

VIA CERTIFIED MAIL

Express Messenger Systems, Inc.
DBA ONTRAC
2501 S. Price Rd., Suite 201
Chandler, Arizona 85286
#70143490000201566642

Express Messenger Systems, Inc.
Agent for Service of Process
CT Corporation System
818 West Seventh St., Suite 930
Los Angeles, CA 90017
#70143490000201566611

VIA ELECTRONIC TRANSMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
151 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

Dear Sir or Madam:

PLEASE TAKE NOTICE that Susana Acosta, on behalf of herself and all others similarly situated, gives notice pursuant to Private Attorneys General Act statute, Labor Code section 2698 *et seq*. Ms. Acosta, on behalf of herself and all other aggrieved employees, alleges Express Messenger Systems, Inc. dba OnTrac committed violations of the California Labor Code, including without limitations sections 201, 202, 203, 221, 223, 226, 226.7, 510, 512, 558, 1194, 1197, 2802, 2698 *et seq.,* applicable IWC Wage Orders (Wage Order 9) and California Code of Regulations, Title 8, section 11000 *et. seq*. Ms. Acosta alleges violations based upon the following facts and theories:

Ms. Acosta was a sorter for OnTrac based in Santa Ana, California from August through September 2015.

OnTrac is a courier/messenger or delivery service. Express Messenger Systems, Inc. is a Delaware corporation doing business as OnTrac. All Labor Code violations and related allegations pertain to all entities or individuals named herein, even if not so specified.

Generally, Ms. Acosta worked from 1:30 a.m. to 9:00/ 9:30 a.m. from Tuesday to Saturday; however, her shift varied based on workload and when the trailers arrived at the warehouse location with merchandise. When the merchandise arrived late, Ms. Acosta and her co-workers were required to work over their scheduled hours.

OnTrac maintained a series of policies that effectively coerced and pressured its non-exempt employees, like Ms. Acosta, to shorten or forego meal and rest periods and to otherwise work beyond the hours that they were properly compensated for by OnTrac. These policies and practices give rise to violations due to failure to pay overtime wages owed, and failure to pay minimum wages.

Ms. Acosta alleges that she and her co-workers were not timely provided legally compliant meal and rest periods as a consequence of their workloads and production demands, and OnTrac's policies.

Ms. Acosta alleges that OnTrac violated Labor Code sections 512 and 226.7 by failing to provide timely, uninterrupted meal periods or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. In this case, OnTrac failed to provide Ms. Acosta and all other aggrieved employees timely, compliant first and second uninterrupted meal periods of not less than thirty (30) minutes. OnTrac implemented and enforced policies and practices which pressured or required employees to work during their meal periods, take untimely meal periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty (30) uninterrupted minutes.

In addition, Ms. Acosta and her co-workers were systematically not permitted or authorized to take one ten-minute rest period for every four hours worked or major fraction thereof, which is a violation of Labor Code 226.7 and IWC wage order 9-2001, section 12. On shifts where Ms. Acosta and her co-workers worked in excess of three and half hours they were routinely not permitted and authorized to take lawful rest periods and were not compensated with one hour of wages for every day in which a rest period was missed or untimely as a result of OnTrac's policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period for every four hours or major fraction thereof worked per day by its non-exempt employees, and by failing to provide compensation for such non-provided or shortened rest periods, as alleged above, OnTrac willfully violated the provisions of Labor Code sections 226.7 and IWC Wage Order No. 9-2001.

Ms. Acosta also alleges that she was required to purchase a back brace as a necessary expense incurred in direct consequence of the discharge of her duties. She was not reimbursed for this expenditure. OnTrac violated Labor Code section 2802 which requires employers to reimburse employees for necessary expenses by failing to reimburse such expenses.

Ms. Acosta further alleges that OnTrac also willfully violated Labor Code sections 201-203 by failing to provide all owed wages at separation from employment. Labor Code sections 201 and 202 require an employer to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages. Ms. Acosta and all other aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid overtime compensation and compensation for non-provided meal and rest periods, but to date have not received such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

In addition, Ms. Acosta alleges that OnTrac violated the provisions of Labor Code sections 212, 221, 223, 510, 1194, and 1197. OnTrac issued payment to its employees, like Ms. Acosta and the other aggrieved employees, for wages in the form of a debit card. However, certain unauthorized debits, charges, and unlawful deductions were taken by the employer and/or the financial institution issuing the debit card from the funds loaded on the employee's debit card (wages earned), such that that the employee was paid less than all wages owed for hours worked. In addition, OnTrac's timekeeping practices resulted in employees not being fully paid for all hours worked.

Finally, OnTrac violated Labor Code section 226 by knowingly and intentionally failing to comply with Labor Code § 226(a) by failing to provide accurate, itemized wage statements with the following information at the time of payment of wages: "(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and 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." In fact, OnTrac generally failed to provide any wage statements to employees at the time of payment of wages and instead did not supply such statements except upon employee request to management. This constitutes a violation of the provision. In addition, given the violations set forth above and the resulting inaccuracies in the wage statements provided by OnTrac to Ms. Acosta and the other aggrieved employees, the wage statements issued by OnTrac are non-compliant.

Please advise by certified mail within 60 days of the postmark of this letter if the LWDA intends to investigate these claims.

Thank you, and please contact me if you have any questions or require additional information.

Sincerely,

Christina M. Lucio, Esq.
JAMES HAWKINS APLC

EXHIBIT C

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

November 24, 2021

Via Online Filing (LWDA) and Certified Mail (Employers)

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
http://www.dir.ca.gov/Private-Attorneys-General-Act

Express Messenger Systems, Inc.
3401 E. Harbour Dr.
Phoenix, AZ 85034-7229
Certified Receipt No. 7021 0950 0000 7376 5958

Express Messenger Systems, Inc.
Agent for Service of Process: Mark Cronkite
1240 S Allec Street
Anaheim, CA 92805
Certified Receipt No. 7021 0950 0000 7376 5965

Ontrac Logistics, Inc.
2501 S. Price Road, Suite 201
Chandler, AZ 85286
Certified Receipt No. 7021 0950 0000 7376 5972

Agent for Service of Process for Ontrac Logistics, Inc.:
CT Corporation System
330 N. Brand Blvd., Suite 700
Glendale, CA 91203
Certified Receipt No. 7021 0950 0000 7376 5989

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff HAROLD FOX, on behalf of himself and all others similarly situated, hereby submits this notice to the LWDA of his Complaint against Defendants EXPRESS MESSENGER SYSTEMS, INC. DBA ONTRAC, a Minnesota Corporation, and ONTRAC LOGISTICS, INC., a Delaware Corporation, and DOES 1 through 50, inclusive, pursuant to Labor Code sections 2698 *et seq*.

Plaintiff alleges that Defendants committed the violations set forth herein against both himself and the group of aggrieved employees that he seeks to represent: Any and all persons who are or were employed by Defendants, either directly or indirectly, in the State of California as non-exempt employees, however titled.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants in California regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Plaintiff Fox worked for Defendant Express Messenger Systems, Inc. DBA Ontrac from September 2020 until March 2021. At various times, Plaintiff worked in shipping, receiving, sorting, loading and unloading. He held various positions, including as a package sorter and package. At all relevant times, Plaintiff was a non-exempt, hourly employee who typically worked 4-5 days per week, and worked between 4 and 10 hours per day. He worked at the location in Sun Valley, California.

Failure to Pay Minimum Wages

During all relevant periods, the California Labor Code sections 204, 1194, 1197, 1198, and wage orders required that Defendants fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours worked. Employers are required to pay at least minimum wage for each hour worked. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit. The IWC Wage Orders define “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.” At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Defendants frequently required Plaintiff and Aggrieved Employees to work off the clock. Plaintiff and the Aggrieved Employees were not paid for all hours worked because employees were required to work off the clock (including before and after shifts, and during purported meal periods). By way of example only, Plaintiff and the Aggrieved Employees were frequently required to remain after clocking out to assist co-workers with various tasks, including unloading trucks and sorting and separating packages. Plaintiff is informed and believes that Defendants were aware that Plaintiff and the Aggrieved Employees were working off the clock and that they should have been paid for this time. However, such time was not paid in violation of the law.

Failure to Pay Overtime Owed

During the relevant periods, Defendants required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek. Both the California Labor Code section 1194, 1197, 510, 1198, and the pertinent wage orders 4-2001, and 9-2001 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times that employee’s regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

Defendants had a uniform policy of requiring Plaintiff and the Aggrieved Employees to work overtime without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Defendants failed to incorporate all forms of compensation, including without limitation bonuses, differentials, premiums, COVID pandemic pay, and incentives, into the regular rate for overtime purposes. In addition, as a matter of policy and practice, Defendants refused to overtime for overtime hours worked. In addition, as set forth above, Plaintiff and the Aggrieved Employees were required to work a significant number of hours off the clock. Many of these hours were overtime hours and should have been paid at the overtime rate. Defendants knew or should have known Plaintiff and the Aggrieved Employees were undercompensated as a result of these practices.

Failure to Provide Lawful Meal Periods

Pursuant to Labor Code §512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all his or her duties, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Defendants failed to provide Plaintiff and Aggrieved Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift. As a consequence of Defendants' policies and practices, labor budgets, requirements, demands, coverage, and staffing, Plaintiff and Aggrieved Employees were often required to forego such meal periods, take shortened or interrupted meal periods, and/or commence their meal periods into and beyond the sixth hour of their shifts. Meal periods were frequently late because, among other things, employees were required perform numerous tasks off the clock before shifts. In addition, as a matter of policy and practice, Defendants failed to provide second meal periods on shifts over ten hours to Plaintiff and the Aggrieved Employees without valid waiver.

Plaintiff and the Aggrieved Employees were not paid one hour of pay at their regular rate for each day that a meal period was not lawfully provided in violation of Labor Code section 226.7. In addition, Plaintiff and the Aggrieved Employees were not paid for the hours worked during purported meal periods.

Failure to Authorize and Permit Lawful Rest Periods

Pursuant to Labor Code section 226.7, 1198, and the IWC wage orders 4-2001, and 9-2001 applicable to Plaintiff's and Aggrieved Employees' employment by Defendants, "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 (4) hours worked or major fraction thereof….Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages." Despite said requirement of the IWC wage orders applicable to Plaintiff's and Aggrieved Employees' employment with

Defendants, Defendants failed and refused to authorize and permit lawful, net ten (10) minutes rest periods for every four (4) hours worked, or major fraction thereof.

As a matter of policy and practice, Defendants failed to authorize and permit lawful rest periods. Defendants maintained and enforced scheduling and staffing practices, policies, and imposed work demands that frequently required Plaintiffs and Aggrieved Employees to forego their lawful, paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Indeed, upon information and belief, Defendants did not relieve employees of duty, failed to provide coverage for breaks and generally did not schedule breaks. Such requisite rest periods were not lawfully authorized and permitted

Plaintiff and the Aggrieved Employees were not paid one hour of pay at their regular rate for each day that a rest period was not lawfully provided in violation of Labor Code section 226.7 and the Wage Order.

Failure to Properly Pay Sick Leave

Plaintiff alleges that Defendant violated Labor Code section 246(l). Labor Code section 246(l) provides: For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Here, in violation of Labor Code section 246, Defendant failed to pay sick leave to employees at the proper regular rate as required by law, Defendant failed to incorporate bonuses, differentials, COVID pandemic pay, and other forms of remuneration in the regular rate.

Failure to Timely Pay Wages Owed at Separation

Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation vacation, within seventy-two (72) hours of separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. In part as a result of the above specified violations, Defendants have also failed to pay all wages owed at the time of separation as required by Labor Code sections 201-203. All aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to unpaid straight time wages, minimum wage, overtime compensation, proper sick pay, and compensation for non-provided meal and rest periods, but to date have not received such compensation, therefore entitling them to civil penalties under PAGA for violations of Labor Code sections 201-203.

In addition, irrespective of any derivative violation, Defendants failed to timely pay Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the time of termination despite their obligations under Labor Code 201 and 202. More than thirty (30) days have passed since some Aggrieved Employees left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code §203.

Failure to Provide Accurate Itemized Employee Wage Statement Provisions

Labor Code section 226(a) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (4) all deductions… (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 each the pay period and the corresponding number of hours worked at each hourly rate by the employee….”.

Further, the IWC Wage Orders require in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded…(5) Total hours worked in the payroll period and applicable rates of pay….” Labor Code section 1174 of the California also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged in the preceding causes of action and herein. Defendants’ failure to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Class Members for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, was an inaccurate wage statement. In addition, the wage statements inaccurately stated totals hours worked and hours worked at each hourly wage rate. Defendants’ wage statements also include erroneous and confusing designations relating to hours purportedly worked, applicable rates, and attendant earnings.

Finally, Plaintiff notes that, according to the Secretary of State website, Defendant Express Messenger Systems, Inc. dba Ontrac has been surrendered (and appears to have been surrendered in 2007). Yet, this is the name that appears on Plaintiff’s and the Aggrieved Employees’ wage statements. Accordingly, Plaintiff asserts Defendant has either misidentified the employer on the wage statements in violation of Labor Code section 226, or Defendant is unlawfully doing business in the State of California.

Failure to Maintain Timekeeping and Payroll Records

In addition, Wage Order No. 4-2001, and 9-2001, Labor Code sections 226(a), 1174, and 1174.5 require that the Defendant maintain accurate payroll and timekeeping information. By virtue of the above- specified violations, including the failure to record hours worked, failure to pay all hours worked, failure to pay accurate overtime, minimum wages, and the proper regular rate for premiums, Defendant failed to keep accurate timekeeping and wage information for Plaintiff and the aggrieved employees as required by law. Defendants also failed to keep accurate payroll information as a consequence of the failure to accurately calculate overtime and pay premiums for missed meal breaks and rest breaks as required by law.

Failure to Provide Lawful Working Conditions

Plaintiff further alleges that Defendants violated Labor Code section 1198, and Wage Order 1-2001, 4-2001 and 9-2001 by violating the temperature control guidelines set forth in Section 15 of the Wage Orders. In relevant part, Section 15 of the Wage Order states:

> (A)The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.
> (B)If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort. Where the nature of the employment requires a temperature of less than 60° F., a heated room shall be provided to which employees may retire for warmth, and such room shall be maintained at not less than 68°.
> (C)A temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and change rooms during hours of use.

Plaintiff alleges that both he and the Aggrieved Employees were subjected to temperatures and conditions that violated the Wage Orders and Labor Code section 1198, as Defendants failed to comply with the mandates set forth in the law. Plaintiff and the Aggrieved Employees were subjected to extreme hot and cold at Defendants' facilities in violation of these mandates.

In addition, Plaintiff further alleges that Defendants failed to provide adequate ventilation and air condition as required by Labor Code sections 1198, 142.3, Wage Order 4-2001 and 9-2001 and applicable regulations including 8 CCR 5142 and 5143. Plaintiff contends that the facility did not have proper air conditioning and proper air ventilation. The facility was very hot for workers during the day and cold at night.

All Labor Code and Wage Order allegations pertain to all entities or individuals named herein, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims.

Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.

EXHIBIT D

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: **01/01/1900 to 11/14/2022**
Client: **EXPRESS101 - Susana Acosta**
Matter: **JRH 3284 - Express Messenger Systems, Inc.- Susana Acosta v. Express**

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
		Balance Forward:	$0.00						
03/21/2016	SCN	Scanning client agreement intake sheet, client produced docs	$3.75		Unbilled				
09/26/2016	FF	Filing Fee- LWDA Paga Notice CK#6900	$75.00		Unbilled				
01/19/2017	INT	Interpreter/Translator Fees- telephine calls to client to discuss complaint- V. Barajas	$25.00		Unbilled				
03/28/2017	FST	First Legal Network- Complaint, Civil Case Cover SHeet, Summons IN#30042762	$676.38		Unbilled				
06/15/2017	FST	First Legal Network-joint rule, interrogs set 1, request for production IN# 30048552	$181.11		Unbilled				
10/03/2019	FST	First Legal Network- E-filing stip , prop order, Mandatory chamb copy stip, prop order PDF, E-filing FAC, Mandatory Chamb copy FAC IN#30112234	$111.50		Unbilled				
04/17/2020	MED	Mediation Services- JAMS IN#5215660 Kessler CK#8610	$4,050.00		Unbilled				
08/10/2020	FST	First Legal Network - Filed, Stipulation, IN#30136335	$586.84		Unbilled				
08/17/2020	FST	First Legal Network - Filed, First Amended Complaint, IN#30136335	$77.94		Unbilled				
10/06/2020	FST	First Legal Network First Amended Complaint and Fee advanced IN#30151410	$1,100.00		Unbilled				
10/06/2020	FST	First Legal Network - First Amended Complaint (additional billing) IN#30141510	$1,100.00		Unbilled				
10/21/2020	EXA	Expert Analysis- IN#3193 CK#8902	$3,500.00		Unbilled				
12/09/2020	CCL	Court Call - 12.09.20 Complex Case Management Conference for CML	$94.00		Unbilled				
03/31/2021	FST	First Legal Network - Filing, parties stip re belaire ntc with ex , stipulation and protective order co , IN#30159758	$157.28		Unbilled				
06/03/2021	FST	First Legal Network- ADD Billing- Parties Stip re Balaire Ntc with Ex; Stip and Protective Order IN#30162706	$44.00		Unbilled				
07/21/2021	CCL	Court Call- 06.16.21- Futher Case Management Conference- CML	$94.00		Unbilled				
11/12/2021	MED	Mediation Services Mediation CK#9610 (1/2 Plf Portion)	$4,000.00		Unbilled				

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
12/08/2021	FST	First Legal Network- Joint Report IN#11728901	$77.94		Unbilled				
12/17/2021	CCL	Court Call - CMC	$94.00		Unbilled				
05/19/2022	FED	FED EX - 05.04.22 Crs to Client re Contact	$27.49		Unbilled				
07/26/2022	CRT	Court Documents - 07.19.22 - order granting leave for SAC	$3.00		Unbilled				
08/02/2022	CRT	Court Documents- 7.19.22 order granting leave for sac	$3.00		Unbilled				
09/12/2022	CCL	Court Call - 09.12.22 DP	$94.00		Unbilled				
		Total:	$16,176.23	$0.00					
		Balance:	$16,176.23						

Total Fees Billed- - - - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Unbilled : - - - - - - - - - - - - - - - -	**$0.00**
Total Fees Received : - - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Billed : - - - - - - - - - - - - - - -	**$0.00**
Total Soft Cost Unbilled : - - - - - - - - - - - -	**$0.00**
Total Soft Cost Received : - - - - - - - - - - - -	**$0.00**
Total Hard Cost Billed : - - - - - - - - - - - - - -	**$0.00**
Total Hard Cost Unbilled : - - - - - - - - - - - -	**$16,176.23**
Total Hard Cost Received : - - - - - - - - - - - -	**$0.00**
Total Taxes Billed : - - - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Unbilled : - - - - - - - - - - - - - - - -	**$0.00**
Total Taxes Received : - - - - - - - - - - - - - - - -	**$0.00**
Total Late Charges Billed : - - - - - - - - - -	**$0.00**
Total Late Charges Unbilled: - - - - - - - - -	**$0.00**
Total Late Charges Received : - - - - - - - - -	**$0.00**
Trust Balance: -	**$0.00**