

December 10, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

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State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: Janine Nelson v Captek Softgel International, Inc., et al.
(Los Angeles Superior Court Case No. 20STCV21184)

Dear Representative:

We have been retained to represent Janine Nelson (“Ms. Nelson”) against Captek Softgel International, Inc., a California corporation (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an “Employer” or person acting on behalf of an “Employer” pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as “Captek”).

Ms. Nelson is pursuing her California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”) claim on a representative basis. Therefore, Ms. Nelson may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Captek is a California corporation located at 16218 Arthur Street, Cerritos, California 90703.

Captek employed Ms. Nelson as an hourly-paid, non-exempt employee within the State of California. Captek directly controlled the wages, hours and working conditions of Ms. Nelson’s employment.

The “aggrieved employees” that Ms. Nelson may seek penalties for are on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Captek within the State of California.

¹ Ms. Nelson does not know the true names or capacities, individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Nelson will amend this notice when the true names and capacities are known. Ms. Nelson is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Nelson and the current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

Captek failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in the Labor Code violations as stated below.

Captek (i) failed to compensate Ms. Nelson and the aggrieved employees for all hours worked, (ii) rounded all hours worked, (iii) failed to properly provide or compensate minimum and overtime wages, (iv) failed to provide timely and off-duty meal and rest breaks (or pay premium pay in lieu thereof), (v) failed to issue compliant wage statements, and (iv) failed to reimburse for all necessary business-related costs and expenses, thus resulting in these Labor Code violations as stated below.

Ms. Nelson and aggrieved employees also regularly worked off the clock in the form of pre-shift and post-shift hours, to their detriment.

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, Ms. Nelson has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at Captek, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

Captek has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Nelson and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. Captek failed to compensate Ms. Nelson and aggrieved employees for all hours worked at the appropriate overtime and double overtime rates and for performing off-the-clock work, including pre- and post-shift and during meal breaks. Upon information and belief, Captek also failed to factor non-discretionary bonuses and incentives in Ms. Nelson's and aggrieved employees' regular rate of pay for purposes of overtime compensation and meal and rest premiums. Therefore, Ms. Nelson and aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, Captek routinely required Ms. Nelson and the aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with Captek policies and expectations. Additionally, Captek failed to authorize and permit Ms. Nelson and aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, Captek failed to compensate Ms. Nelson and aggrieved employees all the premium wages they were owed.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Captek failed to pay Ms. Nelson and aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Captek did not provide Ms. Nelson and aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Captek were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Nelson and aggrieved employees, (2) total hours worked by Ms. Nelson and aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Nelson and aggrieved employees (4) all deductions for Ms. Nelson and aggrieved employees, (5) net wages earned by Ms. Nelson and aggrieved employees, (6) the inclusive dates of the period for which Ms. Nelson and aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or his 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 Ms. Nelson and other aggrieved employees.

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California Labor Code section 558 allows recovery of penalties and wages. (a) Any employer or person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Nelson and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Captek failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Nelson and aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Captek did not provide Ms. Nelson and aggrieved employees with the minimum wages to which they were entitled despite having constructive and actual knowledge of off-the-clock work, including pre- and post-shift hours worked and working during supposedly off-duty meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or his job duties or in direct consequence of his or his obedience to the directions of the employer. During their employment, Ms. Nelson and aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Captek, including for the use of their personal cellular phones and/or safety equipment

We believe that Ms. Nelson and other current and former California-based hourly-paid or non-exempt employees of Captek are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

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California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether the California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Plaintiff and the Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in an amended Complaint.

Wherefore we request that you advise us, by certified mail within sixty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Ms. Nelson and the aggrieved employees should include them as a Labor Code § 2698 claim under the Act in an amended Complaint for *Janine Nelson v Captek Softgel International, Inc.*, Los Angeles Superior Court Case No. 20STCV21184.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION



Douglas Han, Esq.

CC: (By Certified U.S. Mail Only)

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