

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (SB# 272020)

hm@messrelianlaw.com

Maralle Messrelian, Esq. Of Counsel (SB#316974)

maralle@messrelianlaw.com

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiffs Irma Aracely Morataya Espinoza
and Fernando Arciniega

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

07/27/2022 at 03:12:00 PM

By: Angela Linhares,
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

IRMA ARACELY MORATAYA
ESPINOZA and FERNANDO
ARCINIEGA,

Plaintiffs,

vs.

ARDRIA LOGISTICS INC.; DINESH
NAMBISAN; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22CV015139**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) FAILURE TO GIVE REST BREAKS;**

) **8) FAILURE TO GIVE MEAL BREAKS**

) **9) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**

) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **11) DISCRIMINATION ON THE BASIS**
) **OF PHYSICAL DISABILITY IN**
) **VIOLATION OF THE FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**

) **12) FAILURE TO ACCOMMODATE**
) **PHYSICAL DISABILITY IN**
) **VIOLATION OF THE FEHA;**

) **13) FAILURE TO ENGAGE IN**

1)
2)
3)
4)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

**INTERACTIVE PROCESS TO
DETERMINE REASONABLE
ACCOMMODATION IN
VIOLATION OF THE FEHA;
14) RETALIATION IN VIOLATION OF
THE FEHA;
15) FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION IN VIOLATION OF
THE FEHA;
16) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
17) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs, IRMA ARACELY MORATAYA ESPINOZA and
FERNANDO ARCINIEGA, (hereinafter “Plaintiffs”), and allege as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
County of Alameda in this judicial district because Defendants ARDRIA LOGISTICS INC.,
DINESH NAMBISAN, and DOES 1 to 25, inclusive do business in the County of Alameda and
because Defendants’ obligations and liabilities arise therein, and because the work that was
performed by Plaintiffs in the County of Alameda is the subject of this action. Moreover,
Plaintiffs’ damages sought herein exceed \$25,000.

2. Plaintiff IRMA ARACELY MORATAYA ESPINOZA (“ESPINOZA”) is a female
resident of the State of California.

1 3. Plaintiff FERNANDO ARCINIEGA (“ARCINIEGA”) is a male resident of the State of
2 California.

3 4. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
4 ARDRIA LOGISTICS INC. is and was a California business, doing business in Alameda
5 County, and which employed Plaintiffs.

6 5. Defendant DINESH NAMBISAN (“NAMBISAN”) is a citizen of California based on
7 Plaintiffs’ information and belief.

8 6. In relevant part, Labor Code section 558.1 states:

9 (a) Any employer or other person acting on behalf of an employer, who
10 violates, or causes to be violated, any provision regulating minimum
11 wages or hours and days of work in any order of the Industrial Welfare
12 Commission, or violates, or causes to be violated, Sections 203, 226,
13 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such
14 violation.

15 (b) For purposes of this section, the term “other person acting on behalf
16 of an employer” is limited to a natural person who is an owner, director,
17 officer, or managing agent of the employer, and the term “managing
18 agent” has the same meaning as in subdivision (b) of Section 3294 of the
19 Civil Code.

20 7. Plaintiff is informed and believes and thereon alleges that NAMBISAN is a natural
21 person and an owner, director, officer, and/or managing agent of Defendant ARDRIA
22 LOGISTICS INC., who directly or indirectly, or through an agent or any other person, employed
23 or exercised control over the wages, hours, or working conditions of Plaintiffs and the Aggrieved
24 Employees (as defined below). Therefore, he is liable to Plaintiffs and the Aggrieved Employees
25 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7,
26 1193.6, 1194, or 2802, and the Wage Order (no. 9) pursuant to Labor Code section 558.1.
27 ARDRIA LOGISTICS INC. and DINESH NAMBISAN are hereinafter collectively referred to
28 as “ARDRIA” or “Defendants”.

 8. The “Aggrieved Employees” are all current and former non-exempt or hourly paid
employees and who worked for ARDRIA during the relevant time period pursuant to California
Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004
 (“PAGA”).

 9. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs sue
2 them by these fictitious names. Plaintiffs are informed and believe that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiffs will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants.

7 10. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of
8 that information and belief, allege that at all times herein mentioned, each of the remaining
9 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
10 under the authority of their agency, employment, or representative capacity, with the consent of
11 his/her codefendants.

12 **GENERAL ALLEGATIONS**

13 11. Plaintiff ESPINOZA started working for ARDRIA as a driver in or around October 2021.
14 Her employment ended on or around February 11, 2022. ESPINOZA was seemingly classified
15 as an hourly, non-exempt employee and her rate of pay was \$30.125/hour. ESPINOZA's typical
16 schedule was from 10:00 a.m. to 9:00 p.m. or even 10:00 a.m. to 10:00 p.m.

17 12. Plaintiff ARCINIEGA also started working for ARDRIA as a driver in or around
18 September 2021. His employment also ended on or around February 11, 2022. ARCINIEGA
19 was seemingly classified as an hourly, non-exempt employee and his rate of pay was \$32.50 per
20 hour. ARCINIEGA's typical schedule was from 10:00 a.m. to 9:00 p.m. or even 10:00 a.m. to
21 10:00 p.m.

22 13. Both ESPINOZA and ARCINIEGA were advised that they could not return to the base
23 until all of their packages were delivered. Initially, they had to deliver 150 packages, but then
24 the number increased to 180, then 200, then up to 300 packages. The owner of the company
25 threatened to fire them if every single package was not delivered prior to them returning to the
26 base.

27 14. It is Plaintiffs' position that ARDRIA has violated numerous Labor Code Sections
28 against Plaintiffs and other similarly situated Aggrieved Employees.

15. ARDRIA did not provide Plaintiffs and other similarly situated Aggrieved Employees

1 with the minimum wages to which they were entitled for work performed “off the clock” and as
2 such did compensate Plaintiffs and others for all hours worked, pursuant to California Labor
3 Code sections 1194, 1197 and 1197.1. This is so because Plaintiffs’ pay was seemingly not
4 connected to their hours worked, which would be 11-12 hours every single day. Plaintiffs were
5 simply compensated for every single hour they worked. Moreover, there were times when
6 Plaintiffs would be asked to deliver packages when they were not even clocked in and were
7 promised payment for those times, but were never paid. Moreover, ARDRIA had a policy of
8 disproportionately rounding down hours worked to the detriment of employees in that they were
9 not paid for all hours worked, including the minimum wages. As such, ARDRIA violated Labor
10 Code § 1194 and 1194.2 because it failed to pay Plaintiffs and others California’s statutory
11 minimum wage and wages for all hours worked and failed to compensate Plaintiffs and other
12 similarly situated Aggrieved Employees for all hours worked.

13 16. To the extent that the company paid Plaintiffs via piece-rate or per package, they violated
14 Labor Code section 226.2. California Labor Code section 226.2, effective January 1, 2016,
15 provides that employees shall be compensated for rest and recovery periods and other non-
16 productive time separate from any piece-rate compensation. Section 226.2 further requires that
17 employees must be compensated for these time periods at a rate no less than the highest federal,
18 state, or local minimum wage that is applicable to the employment. ARDRIA did not fully and
19 accurately compensate Plaintiffs and all similarly situated Aggrieved Employees for rest and
20 recovery periods and other non-productive time separate from any piece-rate compensation.

21 17. Since ARDRIA failed to pay Plaintiffs and others for all hours worked as alleged above,
22 ARDRIA also violated Labor Code §510 because it failed to pay Plaintiffs and other similarly
23 situated Aggrieved Employees overtime, even though they worked more than 8 hours per day,
24 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiffs’ and others’
25 actual work hours entitled them to overtime compensation and to the correct amount of overtime
26 compensation under the law, including all forms of pay that need to be included in the regular
27 rate of pay for purposes of deciphering the correct overtime rate of pay. It was simply not
28 company policy to provide overtime compensation to Plaintiffs and others, and especially double
time for shifts of 12 hours or more. Note that there were periods wherein ARCINIEGA worked

1 Saturdays and was not paid the proper overtime despite being promised by the owner.

2 18. ARDRIA also violated Labor Code § 226.7 and the appropriate Industrial Welfare
3 Commission Wage Order no. 9 because it failed to provide Plaintiffs and others with 10-minute
4 rest periods for every four hours of work, or majority portion thereof, throughout their
5 employment. ARDRIA did not completely relieve Plaintiffs and others of all duty during said
6 rest periods. ARDRIA did not pay to Plaintiffs and others one additional hour of pay at
7 Plaintiffs' regular rate of compensation for each workday that one or more statutory rest periods
8 was not provided. It was not company policy and not part of the company culture for employees
9 such as Plaintiffs to take rest breaks. The nature of the work for delivery drivers did not lend
10 itself to a 10-minute uninterrupted rest break wherein Plaintiffs and other similarly situated
11 drivers were relieved of all work duties. They literally never got a single rest break during their
12 employment tenure. The owner of the company would put immense pressure on them to deliver
13 ALL of the packages during a particular day. If it would take too much time between scanning
14 of packages (signifying they were delivered), the owner would get upset and question the time.
15 As such, the culture at ARDRIA did not lend itself to the employees receiving statutory breaks
16 wherein they were relieved of all work duties. It was the normal practice and custom of ARDRIA
17 not to authorize, permit, and enforce statutory rest periods.

18 19. ARDRIA violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
19 Commission Wage Order no. 9 because it failed to provide Plaintiffs and others the requisite 30-
20 minute, uninterrupted meal periods for every five (5) hours of work throughout their
21 employment. ARDRIA did not completely relieve Plaintiffs and others of all duty during said
22 meal periods. ARDRIA did not pay to Plaintiffs and others one additional hour of pay at
23 Plaintiffs' regular rate of compensation for each workday that one or more statutory meal periods
24 was not provided. Plaintiffs and other Aggrieved Employees simply did not get any meal periods
25 because they were expected to eat and drive at the same time because of the immense pressure
26 on them to delivery every single package before returning back to the base, which would take
27 12-hours or more at times. As such, there was no such thing as an uninterrupted meal break.
28 They would eat and drive at the same time. Moreover, any argument by ARDRIA that the drivers
signed "On Duty Meal Period Agreements" would not hold water since the nature of their job as

1 drivers does not prevent them from taking statutory breaks. In fact, it is healthy and preferred for
2 delivery drivers to take statutory meal and rest breaks to avoid collisions. Additionally, when
3 Plaintiffs did work over 10-hour shifts, they did not receive a second, uninterrupted meal period
4 of at least thirty minutes. As such, and just like for rest breaks, it was company culture and
5 company policy for Plaintiffs and others to not receive a timely thirty-minute uninterrupted meal
6 period wherein they are relieved of all work-related duties.

7 20. Furthermore, during the relevant time period and due to the above-mentioned violations,
8 ARDRIA failed to pay Plaintiffs and others all wages due to them within any time period
9 specified by California Labor Code section 204. ARDRIA was also in violation of California
10 Labor Code section 226(a), by failing to include pertinent information on the wage statements,
11 including but not limited to, all hours worked (regular and overtime), all applicable hourly rates,
12 gross wages earned, net wages earned, the correct start and end of the pay periods, the correct
13 identifying information for the employee, the correct name and address of the legal employer,
14 business expense reimbursement, and premium pay for the missed meal and rest breaks, among
15 others. As such, ARDRIA did not provide Plaintiffs and other similarly situated Aggrieved
16 Employees with complete, accurate itemized wage statements.

17 21. During the relevant time period, ARDRIA also failed to keep accurate and complete
18 payroll records showing the actual hours worked per day and the wages paid to Plaintiffs and
19 others pursuant to California Labor Code sections 1174(d).

20 22. ARDRIA also violated Labor Code § 203 because it willfully failed to pay Plaintiffs and
21 other similarly situated Aggrieved Employees earned and due wages upon separation of
22 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
23 These earned but unpaid wages include minimum wages, overtime, premium pay for missed
24 meal and rest breaks, and business expense reimbursement, among others.

25 23. Additionally, during the relevant time period, Plaintiffs and others incurred necessary,
26 business-related expenses and costs that were not reimbursed by ARDRIA. These costs include,
27 but are not limited to, use of personal cell phones for work purposes. Accordingly, ARDRIA
28 was in violation of California Labor Code sections 2800 and 2802.

24. Moreover, ARDRIA failed to provide Worker's Compensation coverage for Plaintiffs

1 and other Aggrieved Employees in violation of Labor Code Section 3700.5.

2 25. ARCINIEGA would have claims for wrongful termination, discrimination, and
3 retaliation under the Fair Employment and Housing Act (FEHA) following his on-the-job
4 injuries. During work, there was an incident wherein ARCINIEGA had fallen from the truck and
5 broken his ribs. When ARCINIEGA reported the incident to management, he was told NOT to
6 apply for unemployment or worker's compensation and that they would make a deal with him
7 to avoid him filing for unemployment/worker's compensation. As such, ARDRIA did not
8 provide ARCINIEGA with a worker's compensation claim form to get the process started. Due
9 to his broken ribs, ARCINIEGA was not able to lift the packages that weighed 100-200 pounds
10 and was not able to help ESPINOZA with those heavier packages. As such, towards the end of
11 his employment, there were packages that were not delivered due to ARCINIEGA working with
12 a broken rib. The owner got upset due to all packages not being delivered on a particular day and
13 terminated both ESPINOZA and ARCINIEGA in violation of California law and the Fair
14 Employment and Housing Act. Mr. Espinoza was fired due to a physical disability (broken rib)
15 that he had in fact sustained while on-the-job. Instead of accommodating ARCINIEGA and
16 engaging in a good faith interactive process, he was terminated for his performance despite
17 ARDRIA having full knowledge of his disability and injuries. ESPINOZA was also terminated
18 because she was associated with (Associational Discrimination) ARCINIEGA in violation of the
19 FEHA.

20 26. Pursuant to California Government Code section 12960, Plaintiffs have exhausted their
21 administrative remedies. Plaintiffs filed a complaint with the Department of Fair Employment
22 and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to
23 Plaintiffs a right to sue letter.

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

26 **(California Industrial Welfare Commission Order 9-2001, California Code of
27 Regulations Title 8 Section 11090, and California Labor Code Section 1198)**

28 **(Plaintiffs against all named Defendants and all DOE Defendants)**

27. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs

1 through 26, inclusive, of this Complaint as though fully set forth herein.

28. At all times relevant herein, Defendants were required to compensate their employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 9-2001, California Code of Regulations, Title 8, Section 11090.

29. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiffs for all hours worked. This is so because Defendants would not accurately record the number of hours worked by employees, including Plaintiffs.

30. Under the aforementioned wage order and regulations, Plaintiffs are to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

31. As a proximate result of the aforementioned violations, Plaintiffs have been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

32. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiffs are entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

33. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once they have obtained all of their payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiffs against all named Defendants and all DOE Defendants)

34. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein.

35. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage

1 rate for all hours worked as required by the applicable Industrial Welfare Commission Wage
2 Order No. 9-2001, codified at California Code of Regulations, Title 8, Section 11090,
3 subdivision 4.

4 36. Pursuant to IWC Wage Order No. 9-2001, subdivision 2(H), at all relevant times, “hours
5 worked” included “the time during which an employee is subject to the control of an employer,
6 and includes all the time the employee is suffered or permitted to work, whether or not required
7 to do so, and in the case of an employee who is required to reside on the employment premises,
8 that time spent carrying out assigned duties shall be counted as hours worked...”

9 37. During their employment, Plaintiffs were regularly required as a matter of uniform policy
10 and practice to work, and in fact worked, as employees of Defendants and Plaintiffs were paid
11 less than the minimum wage rate by Defendants for hours worked in violation of California
12 Labor Code Section 1197 and the applicable California Industrial Wage Commission wage
13 order(s).

14 38. Plaintiffs were, at all relevant times, under the control of Defendants and suffered or
15 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
16 compensate Plaintiffs were not in good faith nor were there reasonable grounds for Defendants
17 to believe that their acts or omissions were not contrary to California law.

18 39. For all hours worked by Plaintiffs for which they were paid less than the minimum wage
19 rate by Defendants, Plaintiffs are entitled to not less than the applicable California minimum
20 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal
21 to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiffs
22 are also entitled to attorney’s fees, costs and interests according to proof.

23 40. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at trial.

25 ///

26 ///

27 ///

28 ///

///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 **(California Industrial Welfare Commission Order 9-2001, California Code of**
4 **Regulations Title 8 Section 11090)**

5 **(Plaintiffs against all named Defendants and all DOE Defendants)**

6 41. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
7 1 through 40, inclusive, of this Complaint as though fully set forth herein.

8 42. Pursuant to Industrial Welfare Commission 9-2001, California Code of Regulations,
9 Title 8, Section 11090 for the period of Plaintiffs' employment, Defendants were required to
10 compensate Plaintiffs for all overtime, which is calculated at one and one-half (1.5) times the
11 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
12 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
13 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

14 43. Plaintiffs were non-exempt employees entitled to the protections of the California
15 Industrial Welfare Commission Order No. 9-2001, California Code of Regulations, Title 8,
16 Section 11090.

17 44. Plaintiffs worked more than eight (8) hours or twelve (12) hours in a single workday or
18 forty (40) hours in a single workweek on numerous occasions.

19 45. Plaintiffs were entitled to the above overtime premiums.

20 46. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
21 Plaintiffs' regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiffs'
22 regular rate of pay for hours worked past twelve (12) in a day.

23 47. Defendants did not pay Plaintiffs premium wages of at least one and one-half times
24 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

25 48. Plaintiffs worked at least one pay period in which they were not properly paid overtime
26 within the three (3) years prior to the initiation of this lawsuit.

27 49. Defendants know or should know the actual dates of overtime worked, the amount of
28 overtime worked, and the amount of unpaid overtime due.

50. As a proximate result of Defendants' violations, Plaintiffs have been damaged in an

1 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
2 Court.

3 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
4 Regulations, Title 8, Sections 11090, Plaintiffs are entitled to recover damages for the
5 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
6 reasonable attorney's fees and costs of suit.

7 52. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
9 trial.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(California Labor Code Section 226)**

13 **(Plaintiffs against all named Defendants and all DOE Defendants)**

14 53. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
15 1 through 52, inclusive, of this Complaint as though fully set forth herein.

16 54. Pursuant to California Labor Code Section 226, every employer must furnish each
17 employee an itemized statement of wages and deductions at the time of payment of wages.

18 55. Defendants knowingly and intentionally did not furnish Plaintiffs with any pay stubs that
19 accurately reflected all information required by Labor Code Section 226, including but not
20 limited to, gross wages earned, including overtime, net wages earned, total hours worked by the
21 employee, all deductions, and premium pay for missed meal breaks and rest breaks. In addition,
22 the pay stubs are devoid of any compensation for rest and recovery time pursuant to 226.2.
23 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
24 Plaintiffs in accordance with California Labor Code Section 226(a).

25 56. Pursuant to California Labor Code Section 226(e), Plaintiffs are entitled to recover the
26 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
27 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
28 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
reasonable attorney's fees. Plaintiffs only claim damages under this cause of action pursuant to

1 the 3-year period immediately preceding the date this lawsuit was filed.

2 57. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs have
3 sustained damages, including loss of earnings, in an amount to be established at trial. As a further
4 direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiffs are
5 entitled to recover penalties, in an amount to be established at trial, as well as costs and attorney's
6 fees pursuant to statute.

7 58. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
9 trial.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

12 **(California Labor Code Section 204)**

13 **(Plaintiffs against all named Defendants and all DOE Defendants)**

14 59. Plaintiff re-allege and incorporate by reference each and every allegation in paragraphs
1 through 58, inclusive, of this Complaint as though fully set forth herein.

15 60. California Labor Code Section 204 establishes the fundamental right of all employees
16 in the State of California to be paid wages in a timely fashion for their work.

17 61. At all times relevant during the liability period, Defendants failed to pay Plaintiffs the
18 full amount of all owed wages when due as required by California Labor Code Section 204.

19 62. Defendants failed to pay Plaintiffs all wages earned each pay period. Plaintiffs are
20 informed, believe, and thereon allege, that all times relevant during the liability period,
21 Defendants maintained a policy or practice of not paying Plaintiffs wages for all hours worked,
22 including overtime hours and premium pay for missed rest breaks and meal breaks.

23 63. As a result of Defendants' unlawful conduct, Plaintiffs have suffered damages in an
24 amount, subject to proof, to the extent they were not paid all wages each pay period. The precise
25 amount of unpaid wages is not presently known to Plaintiffs but can be determined directly from
26 Defendants' records or indirectly based on information from Defendants' records.

27 64. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named Defendants and all DOE Defendants)

65. Plaintiff re-allege and incorporate by reference each and every allegation in paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

66. Pursuant to California Labor Code Section 201(a), an employer who discharges an employee must immediately pay for all compensation due and owing.

67. Pursuant to California Labor Code Section 202, when an employee resigns, the employer must pay all compensation due and owing within 72 hours of resignation, or on the employee's last day of work, if the employee gives more than 72 hours notice of resignation.

68. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay, without abatement or reduction, any wages of an employee whose employment ends, the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; however, the wages shall not continue for more than 30 days for failure to pay an employee owed wages.

69. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

70. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiffs pray for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

71. Under this cause of action, Plaintiffs also pray for attorney's fees and costs under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set forth herein. Plaintiffs also pray for interest under California Labor Code Section 218.6.

72. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiffs against all named Defendants and all DOE Defendants)

73. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

74. Plaintiffs brings this cause of action under the following laws, for the following reasons:

- a. Title 8 of the California Code of Regulations Sections 11090(12), which provides that 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 or major fraction thereof;
- b. Title 8 of the California Code of Regulations sections 11090(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- c. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

75. Plaintiffs allege that they were not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

76. Under this cause of action, Plaintiffs pray for wages due to them under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

77. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

1 78. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
3 trial.

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO GIVE MEAL BREAKS**

6 **(Plaintiffs against all named Defendants and all DOE Defendants)**

7 79. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
8 1 through 78, inclusive, of this Complaint as though fully set forth herein.

9 80. Plaintiffs brings this cause of action under the following laws, for the following
10 reasons:

- 11 a. California Labor Code section 512(a), which requires that employees be given a 30-
12 minute uninterrupted meal break after five (5) hours of work, and a second
13 uninterrupted meal break after ten (10) hours of work;
- 14 b. California Labor Code section 226.7, which states that (a) no employer shall require
15 any employee to work during any meal period mandated by an applicable order of
16 the Industrial Welfare Commission, and (b) if any employer fails to provide an
17 employee a meal period in accordance with an applicable order of the Industrial
18 Welfare Commission, the employer shall pay the employee one (1) additional hour
19 of pay at the employee's regular rate of compensation for each workday that the meal
20 period is not provided;
- 21 c. California Industrial Welfare Commission Order No. 9 section 11(A), as codified
22 under Title 8 of the California Code of Regulations Section 11090, which states that
23 an employer may not employ an employee for a work period of more than five (5)
24 hours without providing the employee with a meal period of not less than 30 minutes,
25 except that when a work period of not more than six (6) hours will complete the day's
26 work the meal period may be waived by mutual consent of employer and employee.
- 27 d. California Industrial Welfare Commission Wage Order No. 9 Section 7(A)(3), as
28 codified under Title 8 of the California Code of Regulations Section 11090, which
requires an employer to maintain records documenting its employees' meal periods;

- 1 e. California Industrial Welfare Commission wage order No. 9 Section 20(A), as
2 codified under California Code of Regulations Section 11090, which penalizes the
3 employer \$50.00 for each initial violation, per employee, of any provision of the
4 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
5 f. California Labor Code section 1171 and 1173, which have given the California Labor
6 Commission jurisdiction to enact Wage Orders (such as Wage Order No. 9) as
7 enforceable law.

8 81. Plaintiffs allege that they were not authorized and permitted to take relieved meal breaks
9 after five (5) hours of work (and before the fifth hour) and Defendants did not completely relieve
10 Plaintiffs of all duties during said meal periods. California Labor Code section 512(a) and
11 California Industrial Welfare Commission Order No. 9, as codified under California Code of
12 Regulations Section 11090 *et. seq.* requires that employees receive uninterrupted meal periods
13 every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in
14 length, wherein employee is relieved of all work duty. California Labor Code section 226.7
15 provides that employers may not require their employees to work through their meal periods.
16 California Labor Code section 226.7 requires that if the employer fails to provide the employee
17 with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for
each work day that the meal period is not given.

18 82. Under this cause of action, Plaintiffs pray for wages due to her under the statutes,
19 regulations, and wage orders alleged in this cause of action along with any allowable interest,
20 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiffs pray for the
21 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

22 83. Plaintiffs also pray for Labor Code section 218.5 recovery of costs and attorney's fees as
23 well as interest under Labor Code section 218.6.

24 84. Under this cause of action, Plaintiffs pray for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

27 ///

28 ///

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

3 **(Plaintiffs against all named Defendants and DOE Defendants)**

4 85. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
5 1 through 84, inclusive, of this Complaint as though fully set forth herein.

6 86. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 87. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendants, Plaintiffs incurred reasonable and necessary expenses in the course
11 of completing job duties, which were not reimbursed by Defendants. These expenses include,
12 but are not limited to, the use of personal cell phones for work purposes.

13 88. Plaintiffs are entitled to reimbursement for these necessary expenditures, plus interest
14 and attorney’s fees and costs, under Labor Code section 2802.

15 **TENTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
18 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
19 **1197.1, 1198, 2802, 3700.5)**

20 **(Plaintiffs against all named Defendants and all DOE Defendants)**

21 89. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs
22 1 through 88, inclusive, of this Complaint as though fully set forth herein.

23 90. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and
24 Defendant of the specific violations of the California Labor Code that Defendants and DOE
25 defendants have violated and continue to violate.

26 91. Pursuant to California Labor code section 2699.3, no response was received from the
27 LWDA within 65 days of the postmark date of the above-alleged letter.

28 92. Plaintiffs therefore have exhausted all administrative remedies required of them under
California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this

1 cause of action and pursue penalties in a representative action for DEFENDANTS' violations of
2 the Labor Code.

3 93. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
4 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
5 divisions, commissions, boards, agencies, or employees for violation of the code may, as an
6 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
7 himself or herself and other current or former employees pursuant to the procedures specified in
8 California Labor Code section 2699.3.

9 94. Plaintiffs are "Aggrieved Employees" because Plaintiffs were employed by the alleged
10 violator and had one or more of the alleged violations committed against them, and therefore are
11 properly suited to represent the interests of other current and former employees, including all
12 current and former hourly, non-exempt employees who worked for Defendants in the State of
13 California during the applicable PAGA Period.

14 95. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek
15 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
16 of numerous provisions of the California Labor Code as alleged in this Complaint.

17 96. Plaintiffs therefore have exhausted all administrative remedies required of them under
18 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
19 cause of action and pursue penalties in a representative action for Defendants' violations of the
20 Labor Code.

21 97. California Labor Code section 2699 et seq. imposes penalties upon culpable defendants
22 for violating the Labor Code.

23 98. Plaintiffs seek penalties for Defendants' misconduct as alleged herein as permitted by
24 law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not
25 seeking individual/victim specific relief or underpaid wages for themselves or other employees
26 under this specific PAGA cause of action.

27 99. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
28 the following:

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,

226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 3700.5 and b
any other Labor Codes/Industrial Welfare Commission Order (No. 9) violated based on the
facts alleged in this Complaint.

100. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees,
costs, and civil penalties on behalf of Plaintiffs and other current and former Aggrieved
Employees as alleged herein in an amount to be shown according to proof at trial and within the
jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION
DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION
OF THE FEHA

(Plaintiffs against ARDRIA LOGISTICS INC. and all DOE Defendants)

101. Plaintiffs re-allege and incorporate by reference each and every allegation in
paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

102. At all times mentioned herein, the FEHA, Government Code section 12900 et
seq., was in full force and effect and binding upon Defendants and each of them.

103. California Government Code section 12926(m) has established a "broad
definition" of physical disability: disability protections under the Fair Employment and Housing
Act ("FEHA") even extend to "perceived" physical disabilities. *Id.* Under the law of this state,
"working" is a major life activity. See section 12926.1(c). Furthermore, the FEHA also protects
a person's association with another who has a disability

a. In *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal. App.
5th 1028, 1036-1037 (207 Cal.Rptr.3d 120) ("*Ramirez*"), a case where the employer refused to
adjust the employee's work schedule to administer home dialysis to his disabled son, the court
ruled that FEHA forbids discrimination based on a person's association with another who has a
disability. As such, the court permitted the Claimant to proceed with his associational disability
claim.

b. In *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th
635, 657-658 (163 Cal.Rptr.3d 392) ("*Rope*"), superseded by statute on another ground, the court
ruled that a prima facie case for associational discrimination existed when an employee was fired

1 for requesting time off to donate a kidney to his ailing sister.

2 c. Under California Government Code section 12921, the opportunity to seek,
3 obtain, and hold employment without discrimination because of a person's association with a
4 person who has, or is perceived to have, a physical disability is a civil right.

5 104. Plaintiff ARCINIEGA's injury to his rib, which was debilitating, and which
6 limited a major life activity, qualifies as a disability under FEHA, and Plaintiff ARCINIEGA
7 was entitled to its protection.

8 105. Defendants knew of Plaintiff ARCINIEGA's disability and were also aware of
9 Plaintiff ESPINOZA's association with a disabled person (ARCINIEGA). Defendants violated
10 California Government Code section 12940 et. seq. by discriminating against both Plaintiffs on
11 the basis of ARCINIEGA's disability and ESPINOZA's association with ARCINIEGA.

12 106. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
14 loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 107. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
18 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
19 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
20 their workers' right to work in an environment in which personnel decisions and company
21 policies are made without regard to physical disability, so as to justify the imposition of punitive
22 damages to punish and set an example of said Defendants.

23 108. As a proximate result of the foregoing conduct, which violated the provisions of
24 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur attorney's
25 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

26 ///

27 ///

28 ///

///

TWELFTH CAUSE OF ACTION

**FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF
THE FEHA**

(Plaintiff ARCINIEGA against all ARDRIA LOGISTICS INC. and all DOE Defendants)

109. Plaintiff ARCINIEGA re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.

110. California Government Code section 12940(p) provides that it is unlawful for an employer to fail to make reasonable accommodation for the known physical disability of an employee.

111. Defendants knew Plaintiff injured himself at work and had a broken rib and failed to make reasonable accommodation of Plaintiff's physical disability.

112. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

113. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

114. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

///

///

///

///

THIRTEENTH CAUSE OF ACTION
FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF
THE FEHA

(Plaintiff ARCINIEGA against ARDRIA LOGISTICS INC. and all DOE Defendants)

115. Plaintiff ARCINIEGA re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

116. California Government Code section 12940(n) provides that it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with an employee to determine effective accommodations for that employee's physical disability.

117. As described above, Defendants knew that Plaintiff suffered from a physical disability. Defendants failed to engage in any kind of interactive process with Plaintiff in order to determine whether they could provide Plaintiff with reasonable accommodations. Instead, Defendants pursued discriminatory actions against Plaintiff, including terminating Plaintiff's employment.

118. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

119. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to engage in the interactive process and receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

120. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

///

1 **FOURTEENTH CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF THE FEHA**

3 **(Plaintiffs against ARDRIA LOGISTICS INC. and all DOE Defendants)**

4 121. Plaintiffs re-allege and incorporate by reference each and every allegation in
5 paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.

6 122. At all times herein mentioned, Government Code section 12940 et. seq. was in
7 full force and effect and was binding upon Defendants and each of them. Said statute imposes
8 certain duties upon Defendants concerning discrimination and retaliation against persons, such
9 as Plaintiff ARCINIEGA, on the basis of physical disability or Plaintiff ESPINOZA's
10 association with a disabled person (ARCINIEGA). Said statutes were intended to prevent the
11 type of injury and damage set forth herein. Plaintiffs were, at all times herein mentioned,
12 members of the class of persons intended to be protected by said statutes. As alleged above,
13 Plaintiffs were retaliated against and terminated from their employment as a result of Plaintiff
14 ARCINIEGA's physical disability (broken rib) and Plaintiff ESPINOZA's association with a
disabled person (ARCINIEGA).

15 123. As a direct and proximate result of Defendants' conduct, Plaintiffs have been
16 harmed in that Plaintiffs have suffered the loss of wages, salary, and benefits, among other things.
17 As a result, Plaintiffs have suffered such damages in an amount according to proof.

18 124. As a further direct and proximate result of the conduct of Defendants, and each
19 of them, Plaintiffs have been harmed in that Plaintiffs have suffered humiliation, mental anguish
20 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
21 such damages in an amount according to proof.

22 125. In committing the foregoing acts, Defendants have been guilty of oppression,
23 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiffs to
24 punitive damages in a sum appropriate to punish and make an example out of the foregoing
25 Defendants.

26 126. The acts of oppression, fraud, and/or malice, were engaged in by employees of
27 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
28 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the

wrongful conduct for which an award of punitive damages is sought, and/or was personally guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiffs to punitive and exemplary damages against each of the Defendants in accordance with California Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

127. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiffs have employed and will continue to employ attorneys for the initiation and prosecution of this action. Plaintiffs have incurred and will continue to incur attorneys' fees and costs herein. Plaintiffs are entitled to an award of attorneys' fees and costs.

FIFTEENTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION
OF THE FEHA

(Plaintiffs against ARDRIA LOGISTICS INC. and all DOE Defendants)

128. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 127, inclusive, of this Complaint as though fully set forth herein.

129. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. According to Government Code § 12940(k), it is an unlawful employment practice for an employer to fail to take all reasonable steps necessary to prevent disability discrimination from occurring.

130. As described above, Defendants knew that Plaintiff ARCINIEGA suffered from a physical disability (broken rib) and were also aware of Plaintiff ESPINOZA's association with a disabled person (ARCINIEGA). Defendants failed to engage in any kind of interactive process with Plaintiff ARCINIEGA in order to determine whether they could provide Plaintiff ARCINIEGA with reasonable accommodations. Instead, Defendants pursued discriminatory actions against Plaintiffs, including terminating Plaintiffs' employment.

131. During the course of Plaintiffs' employment, Defendants failed to prevent their employees, including management, from engaging in intentional actions that resulted in

1 Plaintiffs being treated less favorably and eventually being terminated because of Plaintiffs'
2 protected status (i.e., ARCINIEGA' physical disability and ESPINOZA's association with a
3 disabled person). During the course of Plaintiffs' employment, Defendants failed to prevent their
4 employees from engaging in unjustified employment practices against employees in such
5 protected classes. During the course of Plaintiffs' employment, Defendants failed to prevent a
6 pattern and practice by their employees of intentional discrimination and retaliation on the basis
7 of physical disability, and/or other protected status and/or protected activity.

8 132. Plaintiffs believe and, on that basis, allege that ARCINIEGA' physical disability
9 and ESPINOZA's association with a disabled person (ARCINIEGA), were substantial
10 motivating factors in Defendants' employees' discriminating against them and retaliating against
11 them by terminating their employment.

12 133. As a direct and proximate result of the aforementioned acts and omissions of
13 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited to,
14 loss of income (past and future), loss of employment benefits (past and future), general and
15 compensatory damages (past and future), mental pain and anguish and emotional distress (past
16 and future), and will continue to suffer in the future, in an amount to be proved at trial.

17 134. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
18 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
19 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
20 their workers' right to work in an environment in which personnel decisions and company
21 policies are made without regard to physical disability, so as to justify the imposition of punitive
22 damages to punish and set an example of said Defendants.

23 135. As a proximate result of the foregoing conduct, which violated the provisions of
24 Government Code section 12940, et seq., Plaintiffs have been forced to and will incur attorney's
25 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

26 **SIXTEENTH CAUSE OF ACTION**

27 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

28 **(Plaintiffs against ARDRIA LOGISTICS INC. and all DOE Defendants)**

136. Plaintiffs re-allege and incorporate by reference each and every allegation in

1 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

2 137. At all times during their employment with Defendants, Plaintiffs performed
3 their duties with the utmost diligence and competence.

4 138. Plaintiffs are informed and believe and thereon allege that Defendants'
5 decisions to retaliate against them, as alleged herein, was motivated by Plaintiff ARCINIEGA's
6 physical disability, Plaintiff ESPINOZA's association with a disabled person (ARCINIEGA)
7 and Plaintiffs' complaints regarding the labor code violations that were taking place at the
8 workplace. Plaintiffs are further informed and believe and thereon allege that any other reasons
9 proffered by Defendants were and are pretextual in nature. Defendants intentionally created the
10 aforementioned discrimination and retaliation, thereby not giving Plaintiffs an opportunity to
11 work in an environment free of labor code violations, discrimination, and retaliation.

12 139. The employment of Plaintiffs was wrongfully terminated on or around February
13 11, 2022 in violation of the fundamental public policy of the State of California with respect to
14 discrimination and retaliation based on physical disability. Plaintiffs were forced to hire an
15 attorney to assist them to end these illegal activities. Said conduct violated statutory and
16 constitutional expressions of public policy including, but not limited to, California Government
Code sections 12940 et seq., and the California Constitution, Article 1, section 8.

17 140. As set forth above, said actions by Defendants were wrongful and in violation
18 of the fundamental principles of the public policy of the State of California as reflected in its
19 laws, objectives and policies. Said statutes and constitutional expressions of public policy
20 include, but are not limited to, California Labor Code and the California Constitution, Article 1
21 section 8. These laws inure to the benefit of the public at large, and not just the private interests
22 of the employers and employees whom they govern or protect.

23 141. As a direct and proximate result of the aforementioned acts and omissions of
24 Defendants, Plaintiffs suffered general and compensatory damages, including but not limited to,
25 loss of income (past and future), loss of employment benefits (past and future), general and
26 compensatory damages (past and future), mental pain and anguish and emotional distress (past
27 and future), and will continue to suffer in the future, in an amount to be proved at trial.

28 142. The foregoing conduct engaged in by Defendants and each of their directors,

1 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
2 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
3 an environment free of labor code violations, so as to justify the imposition of punitive damages
4 to punish and set an example of said Defendants.

5 **SEVENTEENTH CAUSE OF ACTION**

6 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

7 **(California Business and Professions Code Section 17200)**

8 **(Plaintiffs against ARDRIA LOGISTICS INC. and all DOE defendants)**

9 143. Plaintiffs re-allege and incorporate by reference each and every allegation in
10 paragraphs 1 through 142, inclusive, of this Complaint as though fully set forth herein.

11 144. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
12 constitute unfair and unlawful business practices under California Business and Professions
13 Code Section 17200, et seq.

14 145. Defendants' violations of the FEHA, California labor laws, and the Labor Code,
15 as alleged above constitutes a business practice because it was done repeatedly over a significant
16 period of time in a systematic manner that was detrimental to Plaintiffs and other similarly
17 situated Aggrieved Employees.

18 146. For the four years preceding the filing of this action, Plaintiffs have suffered
19 damages and request damages and/or restitution of all monies and profits to be disgorged from
20 Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of
21 this Court.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as
24 follows:

- 25 1. For compensatory damages including lost past and future wages, regular wages,
26 overtime, and all other sums of money, including employment benefits, together with
27 interest on said amounts, and any other economic injury to Plaintiffs, according to proof;
- 28 2. For general damages according to proof;
3. For special and consequential damages to Plaintiffs in an amount subject to proof at

- trial;
4. For punitive and exemplary damages against ARDRIA LOGISTICS INC. in an amount subject to proof;
 5. For damages for wages and overtime not paid to Plaintiffs in an amount subject to proof at trial;
 6. For damages and penalties under Labor Code Section 226 for Plaintiffs in an amount subject to proof at trial;
 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
 8. For restitution and disgorgement for all unfair business practices by ARDRIA LOGISTICS INC. against Plaintiffs in an amount subject to proof at trial;
 9. For an order enjoining ARDRIA LOGISTICS INC. from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
 10. For an award of punitive and exemplary damages against Defendants according to proof;
 11. For one hour of wages due to Plaintiffs for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
 12. For one hour of wages due to Plaintiffs for each work period of four (4) hours or major fraction thereof when Plaintiffs did not receive a ten (10) minute rest break;
 13. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
 14. For all remedies available to Plaintiffs under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
 15. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiffs, as may be proven;
 16. For the imposition of civil penalties and/or statutory penalties;
 17. For all interest as allowed by law;

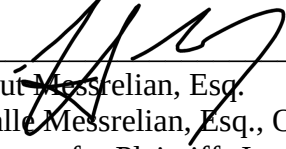
1 18. For all costs and disbursements incurred in this suit;

2 19. Reasonable attorney's fees where available by law, including but not limited to, pursuant
3 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the
4 California Labor Code, the Fair Employment and Housing Act; and/or other applicable
5 laws; and

6 20. For such other and further relief as this Court may deem proper.

7 DATED: July 27, 2022

MESSRELIAN LAW INC.

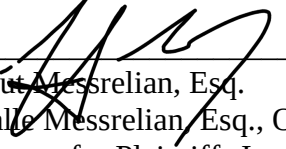
8
9 By 
10 Harout Messrelian, Esq.
11 Maralle Messrelian, Esq., Of Counsel
12 Attorneys for Plaintiffs Irma Aracely Morataya
Espinoza and Fernando Arciniega

13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs hereby demand, as a matter of right, a trial by jury in this case.

15
16 DATED: July 27, 2022

MESSRELIAN LAW INC.

17
18 By 
19 Harout Messrelian, Esq.
20 Maralle Messrelian, Esq., Of Counsel
21 Attorneys for Plaintiffs Irma Aracely Morataya
22 Espinoza and Fernando Arciniega
23
24
25
26
27
28