

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephen Goorvitch

1 DAVID G. SPIVAK. (SBN 179684)

david@spivaklaw.com

2 MAYA CHEAITANI (SBN 335777)

maya@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

8 UNITED EMPLOYEES LAW GROUP

9 4276 Katella Ave

10 Suite 301

Los Alamitos, CA 90720

11 Telephone: (562) 256-1047

12 Facsimile: (562) 256-1006

13 Attorneys for Plaintiff(s),

14 JEREMY PERALTA, and all others similarly situated

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **FOR THE COUNTY OF LOS ANGELES**

17 **(UNLIMITED JURISDICTION)**

18 JEREMY PERALTA, as an “aggrieved
19 employee” on behalf of himself and other
20 similarly situated “aggrieved employees” under
the Labor Code Private Attorneys General Act of
2004,

21 *Plaintiff(s),*

22 vs.

23 ASHER LOGISTIX, INC., a California
24 corporation; and DOES 1–50, inclusive,

25 *Defendant(s).*

Case No. **22STCV29327**

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 Plaintiff, JEREMY PERALTA (hereafter “Plaintiff” or “Peralta”), on behalf of himself,
2 the State of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 9-2001 (hereafter “the
6 Wage Order”), against Defendants Asher Logistix, Inc., a California corporation, and DOES 1-
7 50, inclusive (collectively “Defendants”).

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
9 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
10 and other related relief. These claims are based on Defendants’ failures to:

11 (A) Pay all wages, including minimum, regular, overtime and doubletime
12 wages, earned for all hours worked at the correct rates of pay;

13 (B) Provide all meal periods;

14 (C) Authorize and permit all rest breaks;

15 (D) Pay premium wages for unprovided meal periods;

16 (E) Pay premium wages for unprovided rest breaks;

17 (F) Indemnify for necessary work-related expenditures;

18 (G) Issue only accurate and complete itemized wage statements;

19 (H) Timely pay wages during employment;

20 (I) Timely pay wages upon termination of employment; and

21 (J) Maintain accurate employment records.

22 Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this
23 representative action.

24 **II. THE PARTIES**

25 3. Plaintiff Jeremy Peralta is resident of California.

26 4. Defendant Asher Logistix, Inc. is a corporation organized and existing under the
27 laws of California and also a citizen of California based on Plaintiff’s information and belief.

28 5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of



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Employee Rights Attorneys

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PMB 42554
West Hollywood, CA 90069
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6. The “Aggrieved Employees” are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt employees, individuals performing work comparable to the aforementioned, and individuals in similar positions during the period beginning one year before the Plaintiff’s notice of May 6, 2022, to the California Labor and Workforce Development Agency and ending on the date judgment is entered.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

9. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

10. IWC Wage Order 9-2001 (“the Wage Order”) applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business,

1 or establishment operated for the purpose of conveying persons or property from one place to
2 another whether by rail, highway, air, or water, and all operations and services in connection
3 therewith; and also includes storing or warehousing of goods or property, and the repairing,
4 parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times
5 during the applicable limitations period, the Asher Logistix “Employers, Peralta, and all of the
6 Aggrieved Employees were covered by the Wage Order because the Defendants operated, and
7 Peralta, and all of the Aggrieved Employees worked for, one or more establishments operated as
8 parcel delivery service. Accordingly, Peralta and all of the other Aggrieved Employees are
9 entitled to the protections the Wage Order provides.

10 11. On approximately September 6, 2021, the Defendants began to employ Peralta in
11 El Monte in the position of hourly, non-exempt delivery driver. The Defendants continuously
12 employed him in that capacity until on or about October 16, 2021 when his employment ended.

13 12. At all relevant times, the Defendants issued wages to Peralta and all of the other
14 Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour.
15 At all relevant times, the Defendants classified Peralta and all of the other Aggrieved Employees
16 as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

17 13. At all relevant times, the Defendants failed to provide Peralta and all of the other
18 Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Defendants required
19 Peralta and the Aggrieved Employees to perform their deliveries in accordance with a strict, tight
20 schedule that prevented them from taking their meal periods unless they ate as they drove from
21 one delivery to the next. Additionally, the Defendants required Peralta and the Aggrieved
22 Employees to waive their second meal period when they worked in excess of ten hours per day.
23 The Defendants required Peralta and the Aggrieved Employees to monitor their mobile phones
24 during meal periods when they were clocked out. The Defendants required Peralta and the
25 Aggrieved Employees to travel to their assigned delivery addresses during meal periods clocked
26 out. The Defendants also failed to pay premium wages for days on which they failed to provide
27 Peralta and all of the other Aggrieved Employees with meal periods as required by law.

28 14. At all relevant times, the Defendants failed to authorize and permit Peralta and all



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours
2 worked or major portion thereof. The Defendants required Peralta and the Aggrieved Employees
3 to perform their deliveries in accordance with a strict, tight schedule that prevented them from
4 taking paid ten-minute rest breaks. The Defendants required Peralta and the Aggrieved
5 Employees to perform their deliveries in accordance with a strict, tight schedule that prevented
6 them from taking their rest periods as they drove from one delivery to the next. Additionally, the
7 Defendants required Peralta and the Aggrieved Employees to give up their third rest period when
8 they worked in excess of ten hours per day. The Defendants required Peralta and the Aggrieved
9 Employees to monitor their mobile phones during rest periods when they were clocked out. The
10 Defendants required Peralta and the Aggrieved Employees to travel to their assigned delivery
11 addresses during rest periods. The Defendants also failed to pay premium wages for days on
12 which they failed to authorize and permit Peralta and all of the other Aggrieved Employees to
13 take rest breaks as required by law.

14 15. At all relevant times, the Defendants required Peralta and all of the other
15 Aggrieved Employees to incur certain business expenses in the course of performing their duties.
16 The Defendants required Peralta and all of the other Aggrieved Employees to supply mobile
17 phones to perform their job duties. However, the Defendants did not provide these items and did
18 not reimburse Peralta and the other Aggrieved Employees for these items. The Defendants
19 required Peralta and the Aggrieved Employees to track their work activities on their personal
20 mobile phones and to photograph delivered items with such phones as proof of deliveries. The
21 Defendants did not reimburse Peralta and the Aggrieved Employees for this, nor did they provide
22 phones for this.

23 16. At all relevant times, the Defendants failed to issue to Peralta and all of the other
24 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
25 correct rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to
26 state on the wage statements they issued to Peralta and all of the other Aggrieved Employees the
27 unpaid wages discussed above. The wage statements fail to state all meal period premium wages
28 earned, all rest break premium wages earned, and related information.



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1 17. At all relevant times, the Defendants also failed to timely pay Peralta and all of the
2 other Aggrieved Employees all earned wages as described above during and at the conclusion of
3 employment.

4 18. At all relevant times, the Defendants failed to maintain accurate employee records
5 of Peralta and all of the other Aggrieved Employees.

6 19. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
7 unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- 8 A. Not provided with all off duty meal periods;
9 B. Not authorized and permitted to take all rest break periods;
10 C. Not paid one hour's pay for each workday in which Defendants failed to
11 authorize and permit them to take one or more timely rest periods;
12 D. Not paid one hour's pay for each workday in which Defendants failed to
13 provide them with one or more timely meal periods;
14 E. Not indemnified for all necessary business expenditures incurred during
15 the discharge of their duties;
16 F. Not provided with accurate and complete wage statements; and
17 G. Not timely paid all earned and unpaid wages during their employment with
18 Defendants and at the time such employment ended.

19 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698, *et seq.*)**

22 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
23 **Defendants)**

24 20. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 21. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
26 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

27 **A. FAILURE TO PROVIDE MEAL PERIODS**

28 22. In relevant part, California Labor Code § 1198 states:



SPIVAK LAW

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PMB 42554
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Sherman Oaks, CA 91403



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Mail:
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PMB 42554
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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 The maximum hours of work and the standard conditions of labor fixed by the
2 commission shall be the maximum hours of work and the standard conditions of
3 labor for employees. The employment of any employee for longer hours than those
4 fixed by the order or under conditions of labor prohibited by the order is unlawful.

5 23. In relevant part, In relevant part, California Labor Code § 512 states:

6 An employer shall not employ an employee for a work period of
7 more than five hours per day without providing the employee with
8 a meal period of not less than 30 minutes, except that if the total
9 work period per day of the employee is no more than six hours, the
meal period may be waived by mutual consent of both the
employer and employee.

10 An employer shall not employ an employee for a work period of
11 more than 10 hours per day without providing the employee with
12 a second meal period of not less than 30 minutes, except that if the
13 total hours worked is no more than 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.

14 24. In relevant part, Section 11 of the Wage Order states:

15 Meal Periods:

16 (A) No employer shall employ any person for a work period of more
17 than five (5) hours without a meal period of not less than 30
18 minutes, except that when a work period of not more than six (6)
19 hours will complete the day's work the meal period may be waived
20 by mutual consent of the employer and the employee.

21 (B) An employer may not employ an employee for a work period of
22 more than ten (10) hours per day without providing the employee
23 with a second meal period of not less than 30 minutes, except that
if the total hours worked is no more than 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.

24 (C) Unless the employee is relieved of all duty during a 30 minute meal
25 period, the meal period shall be considered an "on duty" meal
26 period and counted as time worked. An "on duty" meal period shall
27 be permitted only when the nature of the work prevents an
28 employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is

1 agreed to. The written agreement shall state that the employee
2 may, in writing, revoke the agreement at any time.

3 (D) If an employer fails to provide an employee a meal period in
4 accordance with the applicable provisions of this Order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee's regular rate of compensation for each workday that the
7 meal period is not provided.

8 (E) In all places of employment where employees are required to eat
9 on the premises, a suitable place for that purpose shall be
10 designated.

11 25. In relevant part, California Labor Code § 226.7 states:

12 (b) An employer shall not require an employee to work during
13 a meal or rest period mandated pursuant to an applicable
14 statute, or applicable regulation, standard, or order of the
15 Industrial Welfare Commission, the Occupational Safety
16 and Health Standards Board, or the Division of
17 Occupational Safety and Health.

18 (c) If an employer fails to provide an employee a meal period
19 or rest period in accordance with a state law, including, but
20 not limited to, an applicable statute or applicable
21 regulation, standard, or order of the Industrial Welfare
22 Commission, the Occupational Safety and Health
23 Standards Board, or the Division of Occupational Safety
24 and Health, the employer shall pay the employee one
25 additional hour of pay at the employee's regular rate of
26 compensation for each work day that the meal or rest
27 period is not provided.

28 26. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

27 27. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
major fraction thereof.

28 28. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
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Office:
15303 Ventura Bl
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Sherman Oaks, CA 91403

1 with all required 30-minute duty free meal periods and 10-minute rest periods free from any work
2 duties in accordance with the Wage Order.

3 29. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
4 Employees with all timely rest and meal periods. The Defendants required Peralta and the
5 Aggrieved Employees to perform their deliveries in accordance with a strict, tight schedule that
6 prevented them from taking their meal periods unless they ate as they drove from one delivery to
7 the next. Additionally, the Defendants required Peralta and the Aggrieved Employees to waive
8 their second meal period when they worked in excess of ten hours per day. The Defendants
9 required Peralta and the Aggrieved Employees to monitor their mobile phones during meal
10 periods when they were clocked out. The Defendants required Peralta and the Aggrieved
11 Employees to travel to their assigned delivery addresses during meal periods clocked out.
12 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
13 Plaintiff and the other Aggrieved Employees with timely meal periods.

14 30. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
15 Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or
16 major fraction thereof. The Defendants required Peralta and the Aggrieved Employees to perform
17 their deliveries in accordance with a strict, tight schedule that prevented them from taking paid
18 ten-minute rest breaks. The Defendants required Peralta and the Aggrieved Employees to perform
19 their deliveries in accordance with a strict, tight schedule that prevented them from taking their
20 rest periods as they drove from one delivery to the next. Additionally, the Defendants required
21 Peralta and the Aggrieved Employees to give up their third rest period when they worked in excess
22 of ten hours per day. The Defendants required Peralta and the Aggrieved Employees to monitor
23 their mobile phones during rest periods when they were clocked out. The Defendants required
24 Peralta and the Aggrieved Employees to travel to their assigned delivery addresses during rest
25 periods. Defendants did not seek an exemption from the rest period protections of the Wage Order
26 from the California Divisions of Labor Standards Enforcement. Moreover, Defendants failed to
27 pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to provide
28 them with 10-minute rest periods every four hours worked or major fraction thereof.



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 31. Plaintiff is informed and believes and thereon alleges that, at all relevant times
2 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
3 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
4 meal periods and rest breaks required by California law.

5 **B. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

6 32. In relevant part, California Labor Code § 1198 states:

7 The maximum hours of work and the standard conditions of labor
8 fixed by the commission shall be the maximum hours of work and
9 the standard conditions of labor for employees. The employment
10 of any employee for longer hours than those fixed by the order or
 under conditions of labor prohibited by the order is unlawful.

11 33. In relevant part, Section 12 of the Wage Order states:

12 Rest Periods:

13 (A) Every employer shall authorize and permit all employees to take
14 rest periods, which insofar as practicable shall be in the middle of
15 each work period. The authorized rest period time shall be based
16 on the total hours worked daily at the rate of ten (10) minutes net
17 rest time per four (4) hours or major fraction thereof. However, a
18 rest period need not be authorized for employees whose total daily
19 work time is less than three and one-half (3 ½) hours. Authorized
20 rest period time shall be counted as hours worked for which there
21 shall be no deduction from wages.

22 (B) If an employer fails to provide an employee a rest period in
23 accordance with the applicable provisions of this order, the
24 employer shall pay the employee one (1) hour of pay at the
25 employee's regular rate of compensation for each workday
26 that the rest period is not provided.

27 34. In relevant part, California Labor Code § 226.7 states:

28 (b) An employer shall not require an employee to work during
a meal or rest period mandated pursuant to an applicable
statute, or applicable regulation, standard, or order of the
Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.



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Employee Rights Attorneys 25

26 Mail:
8605 Santa Monica Bl
PMB 42554
27 West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com 28

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 (c) If an employer fails to provide an employee a meal period
2 or rest period in accordance with a state law, including, but
3 not limited to, an applicable statute or applicable
4 regulation, standard, or order of the Industrial Welfare
5 Commission, the Occupational Safety and Health
6 Standards Board, or the Division of Occupational Safety
7 and Health, the employer shall pay the employee one
8 additional hour of pay at the employee's regular rate of
9 compensation for each work day that the meal or rest
10 period is not provided.

11 35. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
12 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
13 period of work, or major fraction thereof.

14 36. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
15 Employees to take all 10-minute rest periods free from any work duties in accordance with the
16 Wage Order.

17 37. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
18 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
19 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
20 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

21 38. At all relevant times, due to high workload and low staffing levels, Defendants
22 failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid,
23 duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek
24 an exemption from the rest period protections of the Wage Order from the California Division of
25 Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved
26 Employees premium wages on workdays they failed to authorize and permit them to take 10-
27 minute rest periods every four hours worked or major fraction thereof.

28 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
Employees to take all rest breaks required by California law.



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
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Office:
15303 Ventura Bl
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Sherman Oaks, CA 91403

1 **C. FAILURE TO INDEMNIFY**

2 40. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
3 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
4 consequence of the discharge of his or her duties.” Additionally, the Wage Order states,

5 (A) When uniforms are required by the employer to be worn by the
6 employee as a condition of employment, such uniforms shall be provided
7 and maintained by the employer.

8 ...

9 (B) When tools or equipment are required by the employer or are necessary to
10 the performance of a job, such tools and equipment shall be provided and
11 maintained by the employer, except that an employee whose wages are at
12 least two (2) times the minimum wage provided herein may be required to
13 provide and maintain hand tools and equipment customarily required by
14 the trade or craft.

15 Wage Order, § 9(A) and (B).

16 41. California Labor Code § 1198 prohibits employers from employing their
17 employees under conditions prohibited by the Wage Order.

18 42. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
19 to incur certain business expenses in the course of performing their duties. As described above,
20 the Defendants required Peralta and all of the other Aggrieved Employees to incur certain
21 business expenses in the course of performing their duties. The Defendants required Peralta and
22 all of the other Aggrieved Employees to supply mobile phones to perform their job duties.
23 However, the Defendants did not provide these items and did not reimburse Peralta and the other
24 Aggrieved Employees for these items. The Defendants required Peralta and the Aggrieved
25 Employees to track their work activities on their personal mobile phones and to photograph
26 delivered items with such phones as proof of deliveries. The Defendants did not reimburse Peralta
27 and the Aggrieved Employees for this, nor did they provide phones for this.

28 43. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’



SPIVAK LAW

Employee Rights Attorneys

Mail:
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PMB 42554
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SpivakLaw.com

Office:
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Ste 900
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1 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
2 incurred during the course of performing their duties.

3 **D. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
4 **STATEMENTS**

5 44. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
6 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
7 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
8 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
9 each hourly rate by the employee.

10 45. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
11 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
12 the employer fails to provide accurate and complete information as required by California Labor
13 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
14 alone one or more of the following:

15 A. The amount of the gross wages or net wages paid to the employee during
16 the pay period or any of the other information required to be provided on the itemized wage
17 statement pursuant to California Labor Code § 226(a);

18 B. Which deductions the employer made from gross wages to determine the
19 net wages paid to the employee during the pay period;

20 C. The name and address of the employer and, if the employer is a farm labor
21 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
22 and address of the legal entity that secured the services of the employer during the pay period;

23 D. The name of the employee and only the last four digits of his or his social
24 security number or an employee identification number other than a social security number; and

25 E. The number of piece-rate units earned and the piece rate.

26 46. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
27 means a reasonable person would be able to readily ascertain the information without reference
28 to other documents or information.



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1 47. As alleged herein, at all relevant times during the applicable limitations period,
2 Defendants violated California Labor Code section 226 because they did not properly and
3 accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,
4 the corresponding number of hours worked at each rate by the employee and other requirements
5 of California Labor Code section 226. Defendants failed to state in the wage statements they
6 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
7 including, but not limited to, regular and overtime wages for work they performed off-the-clock
8 after clocking-out (as described above).

9 48. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
10 accurate wage statements was knowing and intentional. Defendants had the ability to provide
11 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
12 provided wage statements that Defendants knew were not accurate.

13 49. As a result of being provided with inaccurate wage statements by Defendants,
14 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
15 accurate wage statements were violated and they were misled about the amount of wages they
16 had actually earned and were owed. In addition, the absence of accurate information on their wage
17 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
18 discovery and mathematical computations to determine the amounts of wages owed, has caused
19 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
20 submission of inaccurate information about wages to state and federal government agencies.
21 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
22 statements whether Defendants complied with their obligations under California Labor Code
23 section 226(a).

24 **E. UNTIMELY WAGES DURING EMPLOYMENT**

25 50. Labor Code § 204 states:

- 26 (a) All wages, other than those mentioned in Section 201,
27 201.3, 202, 204.1, or 204.2, earned by any person in any
28 employment are due and payable twice during each
 calendar month, on days designated in advance by the



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Employee Rights Attorneys

Mail:
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PMB 42554
West Hollywood, CA 90069
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

1 employer as the regular paydays. Labor performed
2 between the 1st and 15th days, inclusive, of any calendar
3 month shall be paid for between the 16th and the 26th day
4 of the month during which the labor was performed, and
5 labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for
7 between the 1st and 10th day of the following month. ...

8
9 (b) (1) Notwithstanding any other provision of this
10 section, all wages earned for labor in excess of the normal
11 work period shall be paid no later than the payday for the
12 next regular payroll period.

13 (2) An employer is in compliance with the
14 requirements of subdivision (a) of Section 226
15 relating to total hours worked by the employee, if
16 hours worked in excess of the normal work period
17 during the current pay period are itemized as
18 corrections on the paystub for the next regular pay
19 period. Any corrections set out in a subsequently
20 issued paystub shall state the inclusive dates of
21 the pay period for which the employer is
22 correcting its initial report of hours worked.

23 (c) However, when employees are covered by a collective
24 bargaining agreement that provides different pay
25 arrangements, those arrangements shall apply to the
26 covered employees.

27 (d) The requirements of this section shall be deemed satisfied
28 by the payment of wages for weekly, biweekly, or
semimonthly payroll if the wages are paid not more than
seven calendar days following the close of the payroll
period.

51. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
on workdays they failed to provide them with one or more meal or rest periods in compliance
with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
and premium wages due during employment within the time periods set by California Labor Code



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Employee Rights Attorneys

Mail:
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section 204.

F. UNTIMELY FINAL WAGES

52. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

53. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

54. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

55. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

G. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

56. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) 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 in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-



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rate units earned.

57. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

58. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (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. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.



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59. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

60. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned

1 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
2 and the Aggrieved Employees.

3 61. Accordingly, Peralta seeks an award of civil penalties against the Defendants on
4 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
5 aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
6 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
7 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
8 pay period (penalties set by Labor Code section 2699(f)(2)).

9 **H. CIVIL PENALTIES SOUGHT**

10 62. Defendants paid wages to employees on regular intervals. Defendants failed to pay
11 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
12 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
13 all wages earned and all hours worked.

14 63. During the applicable time period, Defendants violated California Labor Code §§
15 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, 2802, and related Labor Code statutes.

16 64. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
17 behalf of themselves and other current or former employees, to bring a civil action to recover civil
18 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

19 65. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
20 Employees are entitled to recover civil penalties for each of the Defendants' violations of
21 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, 2802, and related
22 Labor Code statutes during the applicable limitations period in the following amounts:

23 A. For violations of California Labor Code § 204, one hundred dollars
24 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
25 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
26 (penalty amounts established by California Labor Code § 210).

27 B. For violations of California Labor Code § 226, two hundred fifty dollars
28 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee



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1 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

2 C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
3 each aggrieved employee for each initial violation for pay period for which the employee was
4 underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period
5 for which the employee was underpaid (penalty amounts established by California Labor Code
6 § 558).

7 D. For violations of California Labor Code § 1174, five hundred dollars
8 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
9 by Labor Code § 1174.5).

10 E. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1198, and
11 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
12 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
13 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

14 **I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

15 66. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letter dated May 6, 2022, Plaintiff gave written notice by certified mail
17 to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
18 provisions of the California Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
20 dated May 6, 2022, is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s
21 letter.

22 67. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
24 connection with their claims for civil penalties.

25 **V. PRAYER FOR RELIEF**

26 68. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
27 prays for relief and judgment against Defendants as follows:

28 A. Civil penalties;



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SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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- B. Costs of suit;
- C. Reasonable attorneys' fees; and
- D. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: September 8, 2022

By: 

DAVID G. SPIVAK, Attorneys for
Plaintiff(s), JEREMY PERALTA, and
all others similarly situated



SPIVAK LAW

Employee Rights Attorneys

Mail:
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
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Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403

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EXHIBIT “A”



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PMB 42554
West Hollywood, CA 90069
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SpivakLaw.com

Office:
15303 Ventura Bl
Ste 900
Sherman Oaks, CA 91403



THE SPIVAK LAW FIRM

EMPLOYEE RIGHTS

8605 Santa Monica Bl PMB 42554 West Hollywood CA 90069
15303 Ventura Bl Ste 900 Sherman Oaks CA 91403
(213) 725-9094
(213) 634-2485
spivaklaw.com

Mail
Office
Tel
Fax
Web

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 6, 2022

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Jeremy Peralta / Asher Logistix

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Jeremy Peralta (hereafter “Peralta” or “Complainant”) provides notice that Asher Logistix, Inc., a California corporation, and related entities (collectively “the Asher Logistix Employers” or “the Employers”) violated his rights and those of all other individuals the Asher Logistix Employers have employed or otherwise contracted with in California as delivery drivers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 2802, and related Labor Code provisions. On behalf of himself and all other Aggrieved Employees, Peralta hereby provides this notice to the Labor & Workforce Development Agency and the Asher Logistix Employers and their agents and representatives.

At all relevant times, the Asher Logistix Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Peralta and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately September 6, 2021, the Asher Logistix Employers began to employ Peralta in El Monte in the position of hourly, non-exempt delivery driver. The Asher Logistix Employers continuously employed him in that capacity until on or about October 16, 2021 when his employment ended.

At all relevant times, the Asher Logistix Employers issued wages to Peralta and all of the other Aggrieved Employees on a semimonthly (24 paychecks/year) basis and paid them by the hour. At all relevant times, the Asher Logistix Employers classified Peralta and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Asher Logistix Employers required Peralta and all of the other Aggrieved Employees to work in excess of ten hours per day. The Asher Logistix Employers failed to provide Peralta and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Asher Logistix Employers required Peralta and the Aggrieved Employees to perform their deliveries in accordance with a strict, tight schedule that prevented them from taking their meal periods unless they ate as they drove from one delivery to the next. Additionally, the Asher Logistix Employers required Peralta and the Aggrieved Employees to waive their second meal period when they worked in excess of ten hours per day. The Asher Logistix Employers also failed to pay premium wages for days on which they failed to provide Peralta and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Asher Logistix Employers failed to authorize and permit Peralta and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Asher Logistix Employers required Peralta and the Aggrieved Employees to perform their deliveries in accordance with a strict, tight schedule that prevented them from taking paid ten-minute rest breaks. The Asher Logistix Employers also failed to pay premium wages for days on which they failed to authorize and permit Peralta and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Asher Logistix Employers required Peralta and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Asher Logistix Employers required Peralta and all of the other

Aggrieved Employees to supply mobile phones, and related items to perform their job duties. However, the Asher Logistix Employers did not provide these items and did not reimburse Peralta and the other Aggrieved Employees for these items. The Asher Logistix Employers required Peralta and the Aggrieved Employees to track their work activities on their personal mobile phones and to photograph delivered items with such phones as proof of deliveries. The Asher Logistix Employers also monitored the whereabouts of Peralta and the Aggrieved Employees through their personal mobile phones.

At all relevant times, the Asher Logistix Employers failed to issue to Peralta and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Asher Logistix Employers knowingly and intentionally failed to state on the wage statements they issued to Peralta and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, all rest break premium wages earned.

The Asher Logistix Employers also failed to timely pay Peralta and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Asher Logistix Employers failed to maintain accurate employee records of Peralta and all of the other Aggrieved Employees.

For the reasons stated herein, Peralta alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Asher Logistix Employers failed to provide Peralta and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Asher Logistix Employers failed to authorize and permit Peralta and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Asher Logistix Employers failed to compensate Peralta and all of the other Aggrieved Employees at one hour's pay for each day in which the

Asher Logistix Employers failed to provide them with one or more meal periods as required by law;

- (d) The Asher Logistix Employers failed to compensate Peralta and all of the other Aggrieved Employees at one hour's pay for each day in which the Asher Logistix Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Asher Logistix Employers failed to indemnify Peralta and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (f) The Asher Logistix Employers knowingly and intentionally failed to provide Peralta and all of the other Aggrieved Employees with accurate and complete wage statements;
- (g) The Asher Logistix Employers willfully failed to timely pay Peralta and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Asher Logistix Employers and when their employment ended; and
- (h) The Asher Logistix Employers failed to maintain accurate employment records pertaining to Peralta and all of the other Aggrieved Employees.

Accordingly, Peralta now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Asher Logistix Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, §

2(P). At all relevant times during the applicable limitations period, the Asher Logistix Employers, Peralta, and all of the Aggrieved Employees were covered by the Wage Order because the Asher Logistix Employers operated, and Peralta, and all of the Aggrieved Employees worked for, one or more establishments operated as parcel delivery services. Accordingly, Peralta and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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 relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, 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 the employee.
- (B) 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 30 minutes, except that if the total hours worked is no more than 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.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Asher Logistix Employers required Peralta and the Aggrieved Employees to work in excess of eleven hours per day. The Asher Logistix Employers failed to provide Peralta and all of the other Aggrieved Employees with all timely meal periods. The Asher Logistix Employers denied Peralta and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Asher Logistix Employers required Peralta and the Aggrieved Employees to perform their deliveries in accordance with a strict, tight schedule that prevented them from taking their meal periods unless they ate as they drove from one delivery to the next. Additionally, the Asher Logistix Employers required Peralta and the Aggrieved Employees to waive their second meal period when they worked in excess of ten hours per day. Furthermore, the Asher Logistix Employers failed to pay premium wages for days on which they failed to provide Peralta and all of the other Aggrieved Employees with timely meal periods. Accordingly, Peralta now seeks civil penalties for these Labor Code violations that the Asher Logistix Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent

violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and

3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the

employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Asher Logistix Employers failed to authorize and permit Peralta and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Asher Logistix Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Asher Logistix Employers required Peralta and the Aggrieved Employees to perform their deliveries in accordance with a strict, tight schedule that prevented them from taking paid ten-minute rest breaks. Moreover, the Asher Logistix Employers failed to pay Peralta and all of the other Aggrieved Employees premium wages on workdays the Asher Logistix Employers failed to provide Peralta and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Peralta now seeks civil penalties for these Labor Code violations that the Asher Logistix Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Asher Logistix Employers required Peralta and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Asher Logistix Employers required Peralta and all of the other Aggrieved Employees to supply mobile phones, and related items to perform their job duties. However, the Asher Logistix Employers did not provide these items and did not reimburse Peralta and the other Aggrieved Employees for these items. The Asher Logistix Employers required Peralta and the Aggrieved Employees to track their work activities on their personal mobile phones and to photograph delivered items with such phones as proof of deliveries. Additionally, the Asher Logistix Employers monitored the whereabouts of Peralta and the Aggrieved Employees on their personal mobile phones. Accordingly, Peralta seeks civil penalties for these Labor Code violations that the Asher Logistix Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate and Complete Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

At all relevant times during the applicable limitations period, the Asher Logistix Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Asher Logistix Employers failed to state in the wage statements they issued to Peralta and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Asher Logistix Employers knowingly and intentionally failed to state on the wage statements they issued to Peralta and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, all rest break premium wages earned, and other required information. Accordingly, Peralta seeks civil penalties for the Labor Code violations that the Asher Logistix Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for

each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Asher Logistix Employers failed to compensate Peralta and all of the other Aggrieved Employees for wages earned, including unprovided rest break premium wages, unprovided meal period premium wages, and related compensation, at the intervals stated above. As a result, the Asher Logistix Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Peralta now seeks civil penalties for the Labor Code violations that the Asher Logistix Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her

intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Asher Logistix Employers failed to pay Peralta and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Peralta, including unprovided rest break premium wages, unprovided meal period premium wages and related compensation. Additionally, the Asher Logistix Employers failed to issue to Peralta and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Peralta and all of the other Aggrieved Employees as set forth above at the end of employment, the Asher Logistix Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Peralta seeks civil penalties from the Asher Logistix Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200

for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) 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 in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (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. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Asher Logistix Employers failed to compensate Peralta and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned and related information. As a result, the Asher Logistix Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Peralta and all of the other Aggrieved Employees' total hours worked, total

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wages paid, and applicable hourly rates during each payroll period. Accordingly, Peralta seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Jeremy Peralta will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David G. Spivak Esq.

david@spivaklaw.com

cc: Mr. Jeremy Peralta

Mr. Walter L. Haines Esq.

United Employees Law Group

4276 Katella Ave

Suite 301

Los Alamitos CA 90720

walter@uelglaw.com

Asher Logistix, Inc.

c/o Ms. Laurian C. Rutterbush Esq.

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Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

500 Capitol Mall

Suite 2500

Sacramento CA 95814

laurian.rutterbush@ogletree.com