

FILED
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bpresadt
By Deputy
Case Number:
34-2022-00126392

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Attorneys for Plaintiff GUADALUPE RAMIREZ, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

GUADALUPE RAMIREZ, on behalf of herself
and all other aggrieved employees,

Plaintiff,

v.

ASENDIA USA INC., a Pennsylvania
Corporation doing business in California; and
DOES 1- 50, Inclusive,

Defendants,

Case No.

COMPLAINT

1. **Civil Penalties under the Private Attorneys General Act (PAGA), Labor Code § 2698, et seq.**

FILED BY FAX

1 Plaintiff, GUADALUPE RAMIREZ (“Plaintiff”), as a representative of the State of
2 California and the Labor and Workforce Development Agency (LWDA), and on behalf of herself
3 and other current or former aggrieved employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
7 civil penalties for Defendants’ Labor Code violations.

8 2. Defendants and Employers, ASENDIA USA INC., (referred to as “Defendant”)
9 violated numerous wage and hour laws with respect to Plaintiff and other aggrieved employees
10 by failing to provide, for example: accurate and itemized wages statements, payment for all hours
11 worked (including regular wages and overtime), failure to provide a minimum wage lawful meal
12 periods, lawful rest periods, timely payment during employment, failure to reimburse for
13 expenses incurred during the course and scope of employment, and payment upon separation of
14 employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff GUADALUPE RAMIREZ (“Plaintiff” or “RAMIREZ”) is, and at all
18 times mentioned herein, was a resident of the County of Sacramento in the State of California.

19 4. Similarly aggrieved, former and/or current employees are those non-exempt
20 workers employed by Defendants during the relevant time period who were subject to the same
21 wage and hour policies and practices as Plaintiff, and thereby, suffered similar or substantially
22 similar violations (hereinafter “Aggrieved Employees”).

23 **The Defendants**

24 5. Defendants ASENDIA USA INC., is a Pennsylvania corporation which, at all
25 relevant times mentioned herein, existing, doing business and employing individuals in the
26 County of Sacramento, State of California. Plaintiff is informed and thereon alleges that
27 Defendants exercised control over Plaintiff and Aggrieved Employees’ wages, hours, and
28 working conditions.

1 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
2 herein, Defendants, and each of them, exercised control over Plaintiff and Aggrieved Employees'
3 wages, hours, or working conditions.

4 7. The true names and capacities, whether individual, corporate, associate, or
5 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
6 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
7 amend this Complaint to insert the true names and capacities of said Defendants when the same
8 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
9 the fictitiously named Defendants are responsible for the wrongful acts alleged herein and are
10 therefore liable to Plaintiff as alleged hereinafter.

11 8. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
12 of them, including those Defendants named DOES 1-50, acted in concert with one another to
13 commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced
14 one another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further
15 informed and believes, and thereon alleges, that the Defendants, and each of them, including
16 those Defendants named as DOES 1-50, formed and executed a conspiracy or common plan
17 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
18 herein done as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff
19 harm.
20

21 **JURISDICTION AND VENUE**

22 9. Venue is proper in Sacramento County, because Defendants maintains its
23 locations and transacts business in this county, the obligations and liability primarily arise in this
24 county, and work was primarily performed by Plaintiff and other aggrieved employees in this
25 county.

26 10. The California Superior Court has jurisdiction over this matter. The individual
27 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
28 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional

1 amount required for diversity removal. Further, there is no federal question at issue as the issues
2 herein are based solely on California statutes and law, including, but not limited to, the California
3 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
4 and California Rules of Court.

5 **GENERAL ALLEGATIONS**

6 11. Defendants, a supplying company, employed Plaintiff and aggrieved employees,
7 in non-exempt positions, in California during the relevant PAGA period. Plaintiff began working
8 or on about January 2019 to on or about March 2022, as an Administrative Coordinator.

9 12. The position required Plaintiff to work more than 8 hours a day and/or 40 hours
10 per week without lawful compensation. Plaintiff and nonexempt aggrieved employees were
11 regularly not paid for minimum wages and overtime for compensable work time spent under the
12 control of Defendants, but which was performed off-the-clock, even though such additional work
13 time was in excess of regularly scheduled, eight-hour daily shifts. On some weeks, Plaintiff and
14 aggrieved employees were scheduled to work 7 days a week without proper compensation.

15 13. Plaintiff and nonexempt aggrieved employees were subject to not having all their
16 compensable work time recorded. Not all of Plaintiff and nonexempt aggrieved employees'
17 compensable work time spent under the control of Defendants was accounted for and
18 compensated. Specifically, Defendants (1) adjusted clock in and clock out times to the
19 disadvantage of Plaintiff and other non-exempt aggrieved employees by rounding up clock-in
20 times when Plaintiff and non-exempt employees clocked in before the scheduled start of their
21 respective shifts and rounded down clock-out times when Plaintiff and nonexempt aggrieved
22 employees worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff
23 and non-exempt employees to continue working when ostensibly on duty-free meal periods, or
24 requiring them to return to work before the end of their thirty-minute meal periods but prohibiting
25 them from clocking back in until the legally required thirty-minute mark.

26 14. Based on information and belief, Plaintiff believes all non-exempt employees
27 were also not being reimbursed for all necessary expenses incurred in the performance of their
28

1 job duties. Specifically, Defendants required Plaintiff and aggrieved employees, regardless of
2 classification, to use their personal cellular telephones to communicate with colleagues and
3 supervisors in the course of performing their respective duties but failed to reimburse them for
4 use of the personal cellular devices nor the consumption of personal calling or data plans.

5 15. Defendants failed to authorize and permit all required meal and rest periods for
6 Plaintiff and nonexempt aggrieved employees because, upon information and belief, Defendants
7 maintained unlawful meal/rest period policies and practices. In order to curtail labor costs,
8 Defendants regularly did not staff enough employees to provide sufficient coverage to maintain
9 their business operations so Plaintiff and aggrieved employees could not both complete their
10 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
11 Defendants prioritized completion of daily duties ahead of meal and rest period compliance.
12 Furthermore, Defendants nevertheless deducted a half hour from the daily time worked by
13 Plaintiff and aggrieved employers for ostensible meal periods despite the fact such breaks not
14 actually taken or delayed or interrupted. Moreover, Defendants failed to provide Plaintiff and
15 aggrieved employees with an additional hour of premium pay at the regular rate of pay for each
16 meal/rest period violation, as required by Labor Code section 226.7.

17
18 16. As a result of the violations described above, Plaintiff and nonexempt aggrieved
19 employees experienced collateral or derivative violations. Specifically, Defendants failed to
20 provide Plaintiff and nonexempt Aggrieved Employees accurate itemized wage statements in
21 writing in compliance with Labor Code section 226 and failed to compensate Plaintiff and other
22 former nonexempt aggrieved employees for all wages owed at the time employment with
23 Defendants had ended.

24 17. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
25 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
28 behalf of himself or herself and other current or former employees pursuant to the procedures

1 specified in Labor Code section 2699.3.

2 18. For all provisions of the Labor Code except those for which a civil penalty is
3 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
4 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
5 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
6 for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

7 19. Defendants' conduct during the PAGA period with respect to Plaintiff and the
8 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

9 20. Plaintiff alleges that Defendants has engaged in a systematic pattern of wage and
10 hour violations under the California Labor Code and IWC Wage Orders.

11 21. At all relevant times herein, Defendants employed Plaintiff and other aggrieved
12 employees as employees who were subject to the employment policies, in whole or in part, and
13 therefore suffered the same or substantially similar violations, in whole or in part.

14 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
16 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
17 and that they were not receiving all wages earned for work that was required to be performed. In
18 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
19 aggrieved employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
20 aggrieved employees all earned minimum, regular, and/or overtime compensation.

21 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
23 required meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
24 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
25 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
26 and policy of not providing timely meal periods. Defendants failed to pay an additional hour of
27 pay to Plaintiff and aggrieved employees for late meal periods. As a result of Defendants'
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1 unlawful policy and practice, Plaintiff and aggrieved employees did not receive all meal periods
2 or payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate
3 of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

4 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and aggrieved employees were entitled to receive all
6 required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
7 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
8 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
9 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
10 pay to Plaintiff and aggrieved employees for each rest periods were not provided or was
11 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and aggrieved
12 employees did not receive all required rest periods or payment of one (1) additional hour of pay
13 at Plaintiff's and aggrieved employees' regular rate of pay when they did not receive a timely,
14 uninterrupted 10 minute off-duty rest period.

15 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and certain aggrieved employees were entitled to
17 timely payment of wages due upon separation of employment. In violation of the Labor Code,
18 Plaintiff and certain aggrieved employees did not receive payment of all wages due, within
19 permissible time periods, upon separation of employment.

20 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and aggrieved employees were entitled to receive
22 itemized wage statements that accurately showed their actual hours worked, total hours worked,
23 number of hours worked at each hourly rate, gross and net wages earned, and correct employer
24 information in accordance with California law. As a result of the wage violations specified
25 above, and in violation of the Labor Code, Plaintiff and aggrieved employees were not provided
26 with accurate itemized wage statements that accurately reported their gross and net wages
27 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
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1 corresponding number of hours worked, and the address of the legal entity that is the employer,
2 among other things.

3 27. Plaintiff and aggrieved employees were employees covered under one or more
4 statutes under the Labor Code, including but not limited to section 2802, but were not reimbursed
5 by Defendants for all business expenses incurred, including but not limited to expenses arising
6 from use of personal cellular devices for work purposes. Plaintiff will contact agencies and
7 employees using her personal cell phone. Plaintiff would also use her personal vehicle once a
8 week to pick up food for the employees and was not reimbursed for mileage.

9 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Defendants were required to maintain accurate records of the hours
11 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendants failed
12 to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its
13 off-the-clock and/or unfair rounding practices, among other things.

14
15 **FIRST CAUSE OF ACTION**

16 **(Civil Penalties Under the Private Attorneys General Act,**
17 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

18 29. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
19 Complaint as if fully alleged herein.

20 30. By this complaint, Plaintiff brings this case as a representative action seeking
21 penalties for herself, the Aggrieved Employees, and the State of California in a representative
22 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
23 employee who was employed by Defendants and subject to at least one of the Labor Code
24 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
25 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
26 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
27 2802.

28 31. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause

1 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
2 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
3 not to investigate, or after 65 days have passed without notice from the LWDA.

4 32. Prior to filing this complaint, on June 9, 2022, Plaintiff gave written notice of the
5 specific provisions alleged to have been violated, including the facts and theories to support the
6 alleged violations, as required by Labor Code section 2699.3. The written notice was given via
7 certified mail to Defendants, and the LWDA by electronically filing the notice via the
8 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
9 LWDA-CM-888293-22. True and correct copies of Plaintiff's notice to the LWDA and
10 Defendants June 9, 2022, are attached hereto as **Exhibit A**.

11 33. The LWDA has not provided Plaintiff with any notice that it intends to investigate
12 the violations as alleged in Plaintiff's notice dated June 16, 2022, and more than 65 calendar
13 days have elapsed since the postmark date on the latter notice.

14 34. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
15 of this code that provides for a civil penalty to be assessed and collected by the Labor and
16 Workforce Development Agency...for a violation of this code, may, as an alternative, be
17 recovered through a civil action brought by an aggrieved employee on behalf of himself or
18 herself and other current or former employees pursuant to the procedures specified in Section
19 2699.3."

20 35. As an aggrieved employee, Plaintiff brings this civil action to recover civil
21 penalties for Defendant's Labor Code violations.

22 **First Violation**

23 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

24 36. Under California Labor Code §512(a), "An employer may not employ an
25 employee for a work period of more than five hours per day without providing the employee
26 with a meal period of not less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by mutual consent of both
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1 the employer and employee.”

2 37. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other
3 qualifying employees who worked shifts of greater than five hours, meal periods within the first
4 five hours of the shifts worked. Defendants failed to pay Plaintiff one hour’s pay at Plaintiff’s
5 regular rate of pay for each day Defendants failed to provide a meal period in compliance with
6 section 512.

7 **Second Violation**

8 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

9 38. Under California Labor Code §226.7(b), “An employer shall not require an
10 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
11 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

12 39. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
13 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
14 of each work period. The authorized rest period time shall be based on the total hours worked
15 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

16 40. Defendants failed to authorize and permit Plaintiff and other employee to take
17 rest periods and mandated by the Wage Order.

18 41. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
19 one additional hour of pay at the employee’s regular rate of compensation for each workday that
20 the meal or rest or recovery period is not provided.”

21 42. Defendants failed to pay Plaintiff and other employees who were not provided
22 rest periods one hour of pay at their regular rate of pay.

23 **Third Violation**

24 **(Failure to Provide Complete and Accurate Wage Statements,**
25 **in Violation of Labor Code Section 226)**

26 43. Under California Labor Code §226(a), an employer is legally obligated to provide
27 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
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1 in writing...”

2 44. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
3 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
4 Labor Code § 2699.

5 **Fourth Violation**

6 **(Failure to Pay Overtime Wages)**

7 45. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
8 employer is required to compensate employees for all overtime, which is calculated at one and
9 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
10 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
11 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
12 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
13 any workweek.

14 46. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
15 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
16 Labor Code § 2699.

17 **Fifth Violation**

18 **(Failure to Pay Minimum Wages)**

19 47. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
20 payment to an employee of less than the applicable minimum wage for all hours worked in a
21 payroll period is unlawful.

22 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under
24 Labor Code § 2699.

25 **Sixth Violation**

26 **(Failure to Timely Pay Wages During Employment)**

27 49. Pursuant to California Labor Code § 204, for all labor performed between the 1st
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1 and 15th days of any calendar month, an employer is required to pay its employees between the
2 16th and 26th day of the month during which the labor was performed. California Labor Code §
3 204 also provides that for all labor performed between the 16th and 26th days of any calendar
4 month, Defendants was required to pay their employees between the 1st and 15th day of the
5 following calendar month. In addition, California Labor Code § 204 provides that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday of the
7 next regular payroll period.

8 50. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
9 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
10 Labor Code § 2699.

11 **Seventh Violation**

12 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

13 51. Pursuant to California Labor Code § 201, 202, and 203, Defendants is required to
14 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
15 201 mandates that if an employer discharges an employee, the employee's wages accrued and
16 unpaid at the time of discharge are due and payable immediately.

17 52. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
18 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
19 Labor Code § 2699.

20 **Eighth Violation**

21 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

22 **(Against all Defendants and DOES 1 to 50, inclusive)**

23 53. Labor Code § 2802 provides that an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer.

27 54. Defendants failed to indemnify and reimburse Plaintiff for all necessary
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1 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
2 job duties. Plaintiff had expenses arising from use of personal cellular devices for work purposes.
3 Plaintiff would contact agencies and employees using her personal cell phone. Plaintiff would
4 also use her personal vehicle once a week to pick up food for the employees and was not
5 reimbursed for mileage.

6 55. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
7 incurred as a result of discharging his duties, including interest.

8 56. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
9 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
10 Labor Code § 2699.
11

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays for the following relief:

- 14 1. For penalties in an amount according to proof;
15 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
16 3. For such other and further relief as this Court may deem just and proper.
17

18 Respectfully Submitted,
19

20 Dated: September 7, 2022

WORK LAWYERS, PC

21
22
23 By:



Justin Lo, Esq.

Attorney for Plaintiff GUADALUPE RAMIREZ
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EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE June 9, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: Guadalupe Ramirez v. Asendia USA, Inc; ET AL — NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

This office represents Guadalupe Ramirez (“Ms. Ramirez”) with respect to her claims against Asendia USA, Inc (“Employer”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail.

Employers are a corporation doing business in the State of California. Employers employed Ms. Ramirez from approximately January 2019 to March 2022, as a non-exempt employee. During his employment with Employers, Ms. Ramirez was employed as a “Administrative Coordinator” at Employers’ Warehouse located at 2283 Industrial Parkway West Hayward, CA 94545. Ms. Ramirez’s job responsibilities included making sure shipments were done on time. Despite working more than 8 hours in a given workday, Ms. Ramirez and Aggrieved Employees would not receive appropriate overtime pay. Ms. Ramirez and Aggrieved Employees regularly did not receive timely, uninterrupted, or complete meal or rest breaks, because employers expected round-the-clock coverage with insufficient staffing. Ms. Ramirez and Aggrieved Employees were also required to use their own personal cell phones to participate in internal communications with employer, and to communicate with shipping companies. Ms. Ramirez and Aggrieved Employees were required to respond to work-related text messages while off the clock.

Ms. Ramirez intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act



of 2004 (“PAGA”). Ms. Ramirez is seeking penalties on behalf of herself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California’s wage and hour laws during Ms. Ramirez employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Ms. Ramirez and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Ms. Ramirez and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Ms. Ramirez and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Ms. Ramirez and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Ms. Ramirez and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Ms. Ramirez and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition to requiring Ms. Ramirez and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Ms. Ramirez and Aggrieved Employees, which resulted in a failure to pay Ms. Ramirez and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Ms. Ramirez and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Ms. Ramirez and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight



time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Ms. Ramirez and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Ms. Ramirez and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Ms. Ramirez and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Ms. Ramirez and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Ms. Ramirez and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Ramirez and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Ms. Ramirez and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Ms. Ramirez and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Ramirez and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Ms. Ramirez and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Ramirez and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.



Ms. Ramirez and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Ms. Ramirez and Aggrieved Employees take legally compliant 10-minute periods. Employers required Ms. Ramirez and Aggrieved Employees to work through rest periods. Ms. Ramirez and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Ms. Ramirez and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Ms. Ramirez and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Ms. Ramirez and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Ms. Ramirez and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Ms. Ramirez and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Ms. Ramirez and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Ms. Ramirez and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Ms. Ramirez and



other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Ms. Ramirez and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Ms. Ramirez and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Armendariz and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Ms. Armendariz and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Ms. Ramirez and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).



Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Ms. Ramirez and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. Ramirez and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Ms. Ramirez and Aggrieved Employees of their personal cell phone to send and receive messages and calls to contact shipping agencies and to communicate with their employers. Ms. Ramirez and Aggrieved Employees was also instructed to use their personal vehicle to pick up food for co-workers at least once a week without reimbursement for mileage.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Ms. Ramirez and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

Sincerely,


JUSTIN LO ESQ.



Notice provided to Employer via Certified Mail

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Agent for Service of Process for
Asendia USA, Inc
2710 Gateway Oaks Dr Suite 150N
Sacramento, CA 95833

Notice provided to Employer via Certified Mail

Asendia USA, Inc
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