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March 24, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Keegan Flaherty v. DrinkPAK, LLC, et al.*

Dear PAGA Administrator:

This office represents Keegan Flaherty in connection with his claims under the California Labor Code. Mr. Flaherty was an employee of DRINKPAK, LLC; DRINKPAK I LLC; and/or DRINKPAK CONSOLIDATED HOLDINGS, LLC. For the purpose of this letter, Mr. Flaherty collectively refers to these entities as “DRINKPAK.”

The employers may be contacted directly at the addresses below:

DRINKPAK, LLC
21375 NEEDHAM RANCH PKWY
SANTA CLARITA, CA 91321

DRINKPAK I LLC
21375 NEEDHAM RANCH PARKWAY
SANTA CLARITA, CA 91321

DRINKPAK CONSOLIDATED HOLDINGS, LLC
21375 NEEDHAM RANCH PARKWAY
SANTA CLARITA, CA 91321

Mr. Flaherty intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Flaherty seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DRINKPAK in California as a non-exempt, hourly paid employee and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DRINKPAK employed Mr. Flaherty as an hourly paid, non-exempt employee from approximately January 2023 to November 2024 as a Forklift Operator. Mr. Flaherty worked for DRINKPAK out of its location in Santa Clarita, California. During his employment, Mr. Flaherty typically worked twelve (12) hours per day and four (4) days per week. By the end of his employment, Mr. Flaherty was compensated approximately \$23.23 per hour. Mr. Flaherty’s job duties included, without limitation, loading and unloading trucks.

DRINKPAK has committed each of the following Labor Code violations against Mr. Flaherty, the facts and theories of which follow, making his an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

DRINKPAK’s Company-Wide and Uniform Payroll and HR Practices

DRINKPAK, LLC; DRINKPAK I LLC; and DRINKPAK CONSOLIDATED HOLDINGS, LLC are Delaware limited liability companies. Together, they are a contract manufacturer of canned beverages, providing full-service support for procurement, batching, processing, filling, packaging, warehousing, and distribution. Upon information and belief, DRINKPAK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Santa Clarita, California, for all non-exempt, hourly paid employees working for DRINKPAK in California, including Mr. Flaherty and other aggrieved employees. At all relevant times, DRINKPAK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Flaherty and other aggrieved employees, regardless of their location or position.

Upon information and belief, DRINKPAK maintains a centralized Payroll department at its corporate headquarters in Santa Clarita, California, which processes payroll for all non-exempt, hourly paid employees working for DRINKPAK in California, including Mr. Flaherty and other aggrieved employees. Further, DRINKPAK issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Flaherty and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, DRINKPAK utilized the same methods and formulas when calculating wages due to Mr. Flaherty and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

DRINKPAK willfully failed to pay all overtime wages owed to Mr. Flaherty and other aggrieved employees. During the relevant time period, Mr. Flaherty and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Flaherty’s experience and counsel’s review of those records currently available relating to Mr. Flaherty’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Flaherty reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, DRINKPAK had, and continues to have, a company-wide policy and/or practice requiring Mr. Flaherty and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts. For example, twice per month, after clocking out, Mr. Flaherty was required to attend mandatory meetings regarding safety issues and work progress, which lasted about thirty (30) minutes each instance. DRINKPAK failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Flaherty and other aggrieved employees received no compensation for this time.

Second, DRINKPAK had, and continues to have, a company-wide policy and/or practice of understaffing and/or single-staffing its facilities while assigning heavy workloads, including enforcing certain productivity metrics (*see infra*), which resulted in Mr. Flaherty and other aggrieved employees having to work off the clock after clocking out from their shifts and/or on days off. For example, Mr. Flaherty and other aggrieved employees did not have time to complete online safety trainings during their shifts due to the number of trucks they were required to load and unload daily. Moreover, at times, one employee per building would be staffed alone and was responsible for loading/unloading more than 20 trucks in one day. As a result, Mr. Flaherty had to complete at least two (2) safety trainings at home while off the clock, which took about thirty (30) minutes each. DRINKPAK provided no means for Mr. Flaherty and other aggrieved employees to record this time spent working, and as a result, Mr. Flaherty and other aggrieved employees were not compensated for this time that they were subject to DRINKPAK's control after they had clocked out for their shifts and/or on days off.

Third, as stated, DRINKPAK had, and continues to have, company-wide policies and/or practices of understaffing and/or single staffing its facilities and assigning heavy workloads, including implementing productivity goals and time limits on tasks, which resulted in a failure to provide Mr. Flaherty and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. Because DRINKPAK did not employ or staff a sufficient number of employees for the number of trucks that needed to be loaded and unloaded, there was no one available to relieve employees needing meal period coverage, and Mr. Flaherty and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. DRINKPAK also had a practice of failing to schedule meal periods, which further caused Mr. Flaherty and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Mr. Flaherty frequently had his meal periods interrupted by supervisors or co-workers to discuss work-related matters because there were too few employees to provide sufficient coverage. However, DRINKPAK did not compensate Mr. Flaherty and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Moreover, DRINKPAK had, and continues to have, a policy and/or practice of requiring that Mr. Flaherty and other aggrieved employees carry their personal cellular phones and respond to calls at all times. As a result, DRINKPAK's management contacted Mr. Flaherty and other aggrieved employees on their cellular phones during unpaid meal periods to discuss work-related matters. DRINKPAK knew or should have known that Mr. Flaherty and other aggrieved employees were performing work while off-the-clock in order to meet DRINKPAK's expectations, but failed to compensate them for this time.

Fourth, DRINKPAK's company-wide timekeeping system prevented Mr. Flaherty and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Flaherty and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, DRINKPAK did not record all hours worked during meal periods, and Mr. Flaherty and other aggrieved employees performed work during meal periods for which they were not paid.

DRINKPAK knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Flaherty and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Flaherty and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Flaherty and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

DRINKPAK's failure to pay Mr. Flaherty and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, DRINKPAK had a company-wide policy and/or practice requiring Mr. Flaherty and other aggrieved employees to perform work-related tasks while off-the-clock outside of their scheduled shifts and/or on days off, including attending mandatory meetings and completing online safety trainings. DRINKPAK failed to track this time Mr. Flaherty and other aggrieved employees spent working off-the-clock, and Mr. Flaherty and other aggrieved employees received no compensation for this time.

Further, as also stated, due to DRINKPAK's policies and/or practices of understaffing and/or single-staffing its facilities while assigning heavy workloads, failing to schedule meal periods, and requiring employees to respond to phone communications, Mr. Flaherty and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Moreover, as stated, DRINKPAK's company-wide timekeeping system prevented Mr. Flaherty and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Flaherty and other aggrieved employees for a full 30 minutes. Thus, DRINKPAK

systematically failed to pay Mr. Flaherty and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

DRINKPAK did not pay minimum wages for all hours worked by Mr. Flaherty and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, DRINKPAK did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, DRINKPAK regularly failed to pay at least minimum wages to Mr. Flaherty and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, DRINKPAK had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing its facilities while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Flaherty and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, as stated, DRINKPAK had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Flaherty and other aggrieved employees to not be relieved of their duties for compliant meal periods. Furthermore, as also stated, DRINKPAK had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Flaherty and other aggrieved employees respond to requests on their personal cellular phones, including during meal periods.

As a result, Mr. Flaherty and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Flaherty frequently had his meal periods interrupted by supervisors or co-workers calling him to discuss work-related matters. Additionally, Mr. Flaherty sometimes

took his meal periods late, after the fifth hour of work, due to the lack of coverage and heavy workload.

Second, as stated, DRINKPAK's company-wide timekeeping system prevented Mr. Flaherty and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Flaherty and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. As a result of these policies, DRINKPAK deducted meal periods from Mr. Flaherty's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Third, DRINKPAK did not provide Mr. Flaherty and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Flaherty regularly worked shifts in excess of 10 hours in one day and did not receive a second meal period. Mr. Flaherty and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, DRINKPAK had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. DRINKPAK took the position that non-exempt, hourly paid employees had waived their rights to first and second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Further, DRINKPAK's "Employee Meal Period Waiver" form requires employees to provide advance notice should they wish to revoke the waiver. DRINKPAK's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke waivers by providing advance notice, discouraged and impeded Mr. Flaherty and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." Brinker, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That DRINKPAK required Mr. Flaherty and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because DRINKPAK's obligation to provide Mr. Flaherty and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

At all times herein mentioned, DRINKPAK knew or should have known that, as a result of these policies, Mr. Flaherty and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. DRINKPAK

further knew or should have known that DRINKPAK did not pay Mr. Flaherty and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Thus, DRINKPAK engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Flaherty and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods.

Accordingly, DRINKPAK failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198 pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, DRINKPAK regularly failed to authorize and permit Mr. Flaherty and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, DRINKPAK's company-wide practices, including understaffing and/or single-staffing while assigning heavy workloads, prevented Mr. Flaherty and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, DRINKPAK failed to schedule or failed to adhere to a schedule for rest periods, which, coupled with DRINKPAK's failure to provide adequate rest period coverage and DRINKPAK's requirement that employees respond to communications from management and coworkers on their personal cellular phones at all times, further led to Mr. Flaherty and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, on information and belief, DRINKPAK maintained a company-wide on-premises rest period policy, which effectively required that Mr. Flaherty and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Flaherty and/or other aggrieved employees were restricted from leaving the premises during rest

periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, DRINKPAK effectively maintained control over Mr. Flaherty and/or other aggrieved employees during rest periods.

As a result of DRINKPAK's practices and policies, Mr. Flaherty and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Flaherty missed most of his rest periods due to the lack of coverage and heavy workload. As a further example, the rest periods he was able to take were sometimes interrupted by supervisors or co-workers calling to discuss work-related matters.

DRINKPAK also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Mr. Flaherty and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, DRINKPAK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 & California Code of Regulations Title 8, Section 3395 – Failure to Provide Heat Recovery Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide recovery periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest or recovery period is not provided. California Labor Code section 226.7(a) defines "recovery period" to mean a cooldown period afforded an employee to prevent heat illness. California Labor Code section 226.7 provides that no employer shall require an employee to work during any recovery period mandated by an applicable order of the California IWC, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health. The applicable General Industry Safety ("GIS") Order provides that "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code Regs. tit. 8, § 3395(d)(1). Furthermore, "[t]he amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other." *Id.* "Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times." *Id.*

During the relevant time period, DRINKPAK violated California Labor Code section 226.7 and California Code of Regulations, Title 8, section 3395(d), because DRINKPAK failed to provide Mr. Flaherty and other aggrieved employees with recovery periods. For example, DRINKPAK did not inform Mr. Flaherty that he was entitled to recovery periods and Mr. Flaherty was not permitted to take them while working, even though some of his work was performed outside under the sun and in high temperatures.

DRINKPAK also has engaged in a company-wide practice and/or policy of not paying recovery period premiums owed when compliant recovery periods are not provided. Because of this practice and/or policy, Mr. Flaherty and other aggrieved employees have not received premium pay for missed recovery periods.

Accordingly, DRINKPAK failed to authorize and permit recovery periods in violation of California Labor Code sections 226.7, 516, and 1198, and California Code of Regulations, Title 8, section 3395. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable GIS Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DRINKPAK has not provided Mr. Flaherty and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, DRINKPAK has knowingly and intentionally provided Mr. Flaherty and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DRINKPAK issued uniform wage statements to Mr. Flaherty and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, DRINKPAK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because DRINKPAK did not record the time Mr. Flaherty and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), DRINKPAK did not list the correct amount of gross wages and net wages earned by Mr. Flaherty and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5). For the same reason, DRINKPAK failed to accurately list the total number of the hours worked by Mr. Flaherty and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to

list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), DRINKPAK willfully failed to maintain accurate payroll records for Mr. Flaherty and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DRINKPAK engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Flaherty and other aggrieved employees in violation of section 1198. Furthermore, in light of DRINKPAK’s failure to provide Mr. Flaherty and other aggrieved employees with second 30-minute meal periods to which they were entitled, DRINKPAK kept no records of meal start and end times for second meal periods.

Because DRINKPAK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Flaherty and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Flaherty and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of

the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, DRINKPAK failed to pay Mr. Flaherty and other aggrieved employees all wages due to them, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, within any time period specified by California Labor Code section 204.

Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

DRINKPAK willfully failed to pay Mr. Flaherty and other aggrieved employees who are no longer employed by DRINKPAK all their earned wages, including, but not limited to, overtime wages; minimum wages; and/or meal, rest, and recovery period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving DRINKPAK's employ.

Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: "[w]hen 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."

First, during the relevant time period, DRINKPAK, on a company-wide basis, required that Mr. Flaherty and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for all of the costs of their work-related mobile device expenses. For example, Mr. Flaherty and other aggrieved employees were required to use their personal mobile devices for work-related

tasks, including communicating with management regarding work-related issues, downloading and using the Microsoft Teams and Outlook applications to send and receive work-related messages and e-mails, and accessing a website called “Yard Management” to track truck locations. Although DRINKPAK required Mr. Flaherty and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, DRINKPAK failed to reimburse them for these costs.

Second, during the relevant time period, DRINKPAK, on a company-wide basis, required that Mr. Flaherty and other aggrieved employees use their own personal vehicles to travel between buildings on DRINKPAK’s premises and to cover shifts at other assigned (temporary) locations. For example, Mr. Flaherty was required to use his personal vehicle to travel between buildings on DRINKPAK’s premises, totaling approximately 50 miles per week. Additionally, Mr. Flaherty was required to use his personal vehicle to travel to Simi Valley (60 miles roundtrip) and Santa Clarita, California (12 miles roundtrip) to cover shifts at these temporary locations. Although DRINKPAK required Mr. Flaherty and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, DRINKPAK failed to fully reimburse them for their mileage or travel expenses.

Third, during the relevant time period, DRINKPAK, on a company-wide basis, required Mr. Flaherty and other aggrieved employees to wear special safety shoes such as slip-resistant safety boots, which they were required to wear while at work and were necessary for the completion of their work-related duties. However, DRINKPAK did not provide these safety shoes to employees. Instead, Mr. Flaherty and other aggrieved employees were required to purchase safety shoes, such as slip-resistant safety boots, in order to perform their work duties, and were not fully reimbursed for this cost.

DRINKPAK could have provided Mr. Flaherty and other aggrieved employees with company mobile devices, company vehicles, and safety equipment; or DRINKPAK could have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, and safety equipment. Instead, DRINKPAK passed these operating costs onto Mr. Flaherty and other aggrieved employees. At all relevant times, Mr. Flaherty did not earn at least two (2) times the minimum wage.

Thus, DRINKPAK had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must

also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

DRINKPAK failed to provide Mr. Flaherty and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). DRINKPAK's failure to provide Mr. Flaherty and other aggrieved employees with written notice of basic information regarding their employment with DRINKPAK is in violation of Labor Code section 2810.5.

Mr. Flaherty and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring DRINKPAK into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." DRINKPAK, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Flaherty's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Flaherty seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Flaherty, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against DRINKPAK for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Flaherty seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink that reads "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

Sairah Budhwani

Copy: DRINKPAK, LLC (via U.S. Certified Mail); DRINKPAK I LLC (via U.S. Certified Mail);
DRINKPAK CONSOLIDATED HOLDINGS, LLC (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067

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Santa Clarita, CA 91321

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