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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ERNEST RABELAS, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

ARAM LOGISTICS, INC., a California
corporation; and DOES 1 through 100, Inclusive,
Defendants.

Case No. 37-2023-00003165-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*)**
- (2) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ernest Rabelas (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Aram Logistics, Inc., a
3 California corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and on
4 information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class and representative action for recovery of unpaid wages and penalties under California Labor
8 Code sections 226, 2698 *et seq*, and Industrial Welfare Commission Wage Order No. 9 (“Wage
9 Order 9”). This class action is brought pursuant to California Code of Civil Procedure section
10 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because
11 the amount in controversy exceeds this Court’s jurisdictional minimum.

12 **VENUE**

13 2. Venue is proper in this judicial district pursuant to California Code of Civil
14 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
15 occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent
16 or agents within San Diego County, and/or otherwise are found within San Diego County, and
17 Defendants are within the jurisdiction of this Court for purposes of service of process.

18 **PARTIES**

19 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
20 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
21 the filing of this action and within the statute of limitations periods applicable to each cause of
22 action pled herein, Plaintiff was employed by Defendants. Plaintiff was, and is, a victim of
23 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
24 been deprived of the rights guaranteed by California Labor Code § 226, 2698 *et seq*, and Wage
25 Order 9, which sets employment standards for industry, business, and establishment operated for
26 the purpose of conveying persons or property from one place to another whether by rail, highway,
27 air, or water, and all operations and services in connection therewith; and also includes storing or
28 warehousing of goods or property.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
2 year preceding the filing of this lawsuit and continuing to the present, Defendants did (and do)
3 business as a third-party logistics company, and that they employed Plaintiff and other similarly
4 situated employees within San Diego County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Class (as defined in Paragraph 15) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 members (as defined in Paragraph 15).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants for approximately two years until
28 approximately October 2022.

1 10. During Plaintiff’s employment with Defendants, Plaintiff was provided inaccurate
2 wage statements, in that the wage statements issued to Plaintiff and other employees were facially
3 deficient in that they failed to list an address for Plaintiff’s employer Aram Logistics, Inc., and
4 therefore, failed to comply with Labor Code § 226(a)(8). Specifically, during the relevant time
5 period, the wage statements issued by Defendants generally included only “Aram Logistics –
6 Chula Vista CA 91911” but did not contain the street address for Aram Logistics, Inc. Plaintiff is
7 informed and believes, and based thereon alleges, that Defendants have issued similar wage
8 statements to all of its employees during the relevant time period. Thus, the wage statements
9 issued to Plaintiff and Defendants’ other employees, failed to comply with the requirements set
10 forth by Labor Code § 226(a)(8).

11 11. In addition to their failure to issue accurate itemized wage statements, Defendants
12 have maintained timekeeping and payroll practices which resulted in Plaintiff and other
13 employees being paid late in violation of Labor Code §§ 204 and/or 204b. Specifically,
14 Defendants maintain a payroll practice in which Plaintiff and other employees are paid on a
15 weekly basis, but are paid 10 days after the end of each weekly pay period. This practice has
16 resulted in many pay periods in which Plaintiff and other employees have been paid late under
17 Labor Code § 204. For example, for wages earned during the pay period of March 30, through
18 April 5, 2022, Plaintiff was not paid until April 15, 2022; thus, wages earned during the last two
19 days of March were paid after April 10th. Labor Code § 204(a) requires “Labor performed
20 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the
21 16th and the 26th day of the month during which the labor was performed, and labor performed
22 between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the
23 1st and 10th day of the following month.” Thus, by failing to pay Plaintiff for the wages he earned
24 during the end of March 2022, until April 15, 2022, Defendants payroll practices violate Labor
25 Code § 204, as it resulted in Plaintiff and other employees being paid late for wages earned in the
26 previous pay period. Plaintiff is informed and believes that Defendants have paid its other
27 employees in the same manner, and has therefore violated Labor Code § 204 with respect to all
28 of its employees during the relevant time period.

12. Alternatively, if Labor Code section 204 does not apply to Defendants' employees and Section 204b instead applies, then Defendants' payroll practices also have violated Labor Code § 204b. Section 204b provides (emphasis added): "Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day designated by the employer in advance of the rendition of services as the regular payday. **Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.** Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week."

13. Defendants' paydays are on Fridays. Thus, Section 204b requires that "any labor performed...prior to or on [Friday]" must be "paid for not later than the [Friday]...falling during the following week." Defendants' pay periods run from Wednesday through Tuesday, and there are 10 days between the close of each pay period and the pay date. For example, Defendants' pay period of Wednesday, October 5 through Tuesday, October 11, 2022, had a pay date of Friday, October 21, 2022. Thus, Defendants' pay practices have resulted in labor worked on Wednesday, Thursday, Friday of each calendar week (in this example, October 5, 6, and 7, 2022), not being paid on the Friday of the following week, but rather on the Friday of two calendar weeks later, in violation of Labor Code § 204b.

14. As another example, in the pay period of Wednesday, April 6 to Tuesday, April 12, 2022, Defendants paid Plaintiff on April 22, 2022, 10 days after the close of the pay period. Pursuant to Labor Code § 204b, wages from April 6, 7, and 8 (Wednesday through Friday) should have been paid no later than the regular payday falling during the following calendar week, i.e., April 15, 2022. Thus, Defendants' pay practices resulted in wages earned on April 6, 7, and 8 (prior to and on that calendar week's regular pay day) to be paid late.

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1 **CLASS ACTION ALLEGATIONS**

2 15. Class Definition: Plaintiff bring this action on behalf of himself and the following
3 Class pursuant to Section 382 of the Code of Civil Procedure:

4 a. The Wage Statement Class consists of all of the Defendants' current and former
5 employees in California who in at least one pay period were issued a wage statement that
6 failed to include an accurate and complete address for Defendants, at any time from one
7 year immediately preceding the filing of this action through the present.

8 16. **Numerosity/Ascertainability:** The members of the Class are so numerous that
9 joinder of all members would be unfeasible and impracticable. The membership of the Class is
10 unknown to Plaintiff at this time; however, it is estimated that the Class number greater than fifty
11 (50) individuals. The identity of such membership is readily ascertainable via Defendants'
12 employment records.

13 17. **Common Questions of Law and Fact Predominate/Well Defined Community**
14 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
15 situated employees, which predominate over questions affecting only individual members
16 including, without limitation to:

17 i. Whether Defendants furnished legally compliant wage statements to
18 members of the Wage Statement Class pursuant to Labor Code § 226.

19 18. **Predominance of Common Questions:** Common questions of law and fact
20 predominate over questions that affect only individual members of the Class. The common
21 questions of law set forth above are numerous and substantial and stem from Defendants' policies
22 and/or practices applicable to each individual class member, such as Defendants' wage statement
23 policies/practices. As such, the common questions predominate over individual questions
24 concerning each individual class member's showing as to his or her eligibility for recovery or as
25 to the amount of his or her damages.

26 19. **Typicality:** Plaintiff's claims are typical of the claims of the Class because
27 Plaintiff was employed by Defendants in California during the statute(s) of limitation applicable
28 to each cause of action pled in the Complaint in this action. As alleged herein, Plaintiff, like the

members of the Class, was furnished with inaccurate wage statements that failed to include the address of the employer.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of the Class and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Class.

21. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of individual Class members are not sufficiently large to warrant vigorous individual
3 prosecution considering all of the concomitant costs and expenses attending thereto. Thus, the
4 Class identified in Paragraph 15 is maintainable under Code Civ. Proc. § 382.

5 **FIRST CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
11 and the Wage Statement Class with accurate and complete itemized wage statements that
12 included, among other requirements, the address of the employer, in violation of Labor Code §
13 226.

14 24. Defendants' failure to furnish Plaintiff and Wage Statement Class members with
15 complete and accurate itemized wage statements resulted in injury, as said failure created
16 confusion over the actual name and address of the employer and deprived Wage Statement Class
17 members of, among other things, the information necessary to effectively comprehend the actual
18 name and address of their employer.

19 25. Defendants' failures create an entitlement to recovery by Plaintiff and members of
20 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
21 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
22 of suit according to California Labor Code §§ 226 and 226.3.

23 **SECOND CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **(AGAINST ALL DEFENDANTS)**

26 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.
27 Defendants have committed several Labor Code violations against Plaintiff and other aggrieved
28 employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*

Plaintiff, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; and/or (2) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to timely pay Plaintiff and other aggrieved employees all wages earned during employment, in violation of Labor Code §§ 204 and 204b.

27. On or about January 23, 2023, Plaintiff notified Defendant Aram Logistics, Inc., via certified mail, and the Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties under Labor Code § 2698 *et seq.* (“PAGA”). Defendants submitted a cure letter to the LWDA, in which, *inter alia*, Defendants alleged they had cured the violations of Labor Code § 226(a)(8). Plaintiff submitted a cure dispute, which also included additional allegations and theories of liability. The LWDA offered Defendants three additional business days to cure the Section 226(a)(8) violation. On March 20, 2023, after Defendants submitted additional evidence, the LWDA issued its “Decision on Cure Dispute.” The LWDA found that Defendants had cured the Section 226(a)(8) violation for PAGA purposes, but the LWDA took no position as to the other violations alleged by Plaintiff.

28. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

- 1 1. For an order certifying the proposed Class;
- 2 2. For an order appointing Plaintiff as representative of the Class;
- 3 3. For an order appointing counsel for Plaintiff as counsel for the Class;
- 4 4. Upon the First Cause of Action, for statutory penalties pursuant to Labor Code §
- 5 226, *et seq.*;
- 6 5. Upon the Second Cause of Action, for civil penalties due to Plaintiff, other aggrieved
- 7 employees, and the State of California according to proof pursuant to Labor Code § 2699,
- 8 including, but not limited to: (1) \$50.00 for each initial violation and \$100.00 for each subsequent
- 9 violation pursuant to Labor Code § 558 per employee per pay period; and/or (2) \$100.00 for each
- 10 initial violation and \$200.00 for each subsequent violation per employee per pay period for those
- 11 violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor
- 12 Code § 2699(f);
- 13 6. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
- 14 226(e), 2699(g); and
- 15 7. For such other and further relief the Court may deem just and proper.

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17 Date: March 31, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

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19 By: _____

Tuvia Korobkin
Attorneys for Plaintiff

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22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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25 Dated: March 31, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

26

27 By: _____

Tuvia Korobkin
Attorneys for Plaintiff