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on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TUOLUMNE

ANDREA OTANEZ VERDUGO, individually, and
on behalf of others similarly situated

Plaintiff,

v.

CAPSTONE LOGISTICS, LLC, a Delaware
Limited Liability Company with its principal place
of business in Georgia; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: CV66120

UNLIMITED CIVIL

**DECLARATION OF TARAS KICK IN
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: July 31, 2026

Time: 9:30 a.m.

Dept.: 3

Action Filed: April 22, 2024

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received the Dean's Scholar Prize, and was admitted to the California Bar in 2015. Mr. Taylor is a 2016 graduate of UCLA School of Law, where he was a Dean's merit scholarship recipient, and represented plaintiffs in employment actions for approximately five years before joining TKLF in 2022. Attorney Nick Rosenthal also worked on this matter while he was employed by The Kick Law Firm, APC from about March 2024 until about March 2025, at which time he opened his own office.

4. The Kick Law Firm, APC, primarily represents plaintiffs in class actions. The class action cases in which I have been appointed either as lead counsel, or as co-lead counsel, include the following: *Martyniuk v. USKO Express, Inc.*, LASC Case No. 20STCV07379 (wage and hour class action, final approval granted June 29, 2023); *Torres, et al. v. Monetary Management of California, Inc.*, LASC Case No. 21STCV09917 (wage and hour class action, final approval granted June 30, 2023); *Lizarraga v. Digby Southwest, Inc.*, LASC Case No. 19STCV27901 (wage and hour class action, final approval granted November 13, 2023); *Mitchel, et al. v. Pacific Investment & Management, Inc., et al.* (wage and hour class action, final approval granted June 2, 2023); *Ruiz, et al. v. Trans International Trucking, Inc.*, LASC Case No. 20STCV03790 (wage and hour class action, final approval granted April 11, 2023); *Yarian v. All Freight Carriers, Inc., et al.*, LASC Case No. 19STCV28735 (wage and hour class action, final approval granted March 7, 2023); *Polar v. Button Transportation, Inc., et al.*, Los Angeles County Superior Court Case No. 21STCV02575 (wage and hour class and representative PAGA action, final approval granted May 31, 2023); *Salter v. Quality Carriers, Inc.*, U.S. District Court for the Central District of California Case No: 2:20-cv-00479-JFW-JPRx (wage and hour class and representative PAGA action, final approval granted March 27, 2023); *Eaton v. Cavalia (USA) Inc., et al.*, San Francisco County Superior Court, Case No. CGC-19-579421 (wage and hour class and representative PAGA action, final approval granted November 21, 2022); *Johnson v. Randy Taylor Consulting, LLC, et al.*, Los Angeles County Superior Court Case No. 21SMCV00156, SSC-207 (wage and hour class and representative PAGA action, final approval granted November 2, 2022); *In Re Southern California Gas Leak Cases, Judicial Council Coordinated Proceeding No. 4861*, assigned to Hon. Daniel J. Buckley, Coordination Trial Judge, Dept. SSC-1 (co-lead counsel for class action and member of the class action steering committee, final approval granted April 29, 2022); *Samano v. De Leon Transport, Inc.*, Los Angeles County

1 Superior Court, Case No. 19STCV44589 (wage and hour class and representative PAGA action; final
2 approval granted January 22, 2022); *Johnson, et al., v. Angel View*, San Bernardino County Superior
3 Court, Case No. CIVDS1935378 (wage and hour class and representative PAGA action; final
4 approval granted November 18, 2021); *Imperial Wage And Hour Cases*, San Bernardino County
5 Superior Court, Case No. JCPDS5130 (wage and hour class and representative PAGA action; final
6 approval granted November 2, 2021); *Metzke v. Thermo Fisher Scientific, Inc.*, San Francisco County
7 Superior Court, Case No. CGC-19-581914 (class and representative PAGA action; final approval
8 granted October 28, 2021); *Daves, et al. v. Amadeus Waterawys, Inc.*, Los Angeles County Superior
9 Court, Case No. 19STCV25203 (wage and hour class action; final approval granted January 8, 2021);
10 *Pereyra v. Mike Campbell & Associates*, Los Angeles County Superior Court Case No. BC365631
11 (wage and hour class action, final approval granted); *Lloyd v. Navy Federal Credit Union*, United
12 States District Court for the Southern District of California, Case No. 3:17-cv-01280 (final approval
13 granted May 18, 2019); *Story v. SEFCU*, United States District Court for the Northern District of
14 New York, Case No. 1:18-cv-00764 (final approval granted on February 25, 2021); *Smith v. Bank of*
15 *Hawaii*, United States District Court for the District of Hawaii, Case No. 1:16-cv-00513 (final
16 approval granted on December 22, 2020); *Coleman-Weathersbee v. Michigan State University*
17 *Federal Credit Union*, United States District Court for the Eastern District of Michigan, Case No.
18 2:19-cv-11674 (final approval granted on July 29, 2020); *Walker v. People's United Bank*, United
19 States District Court for the District of Connecticut, Case No. 3:17-cv-00304 (final approval granted
20 on June 29, 2020); *Salls v. Digital Federal Credit Union*, United States District Court for the District
21 of Massachusetts, Case. No. 18-cv-11262-TSH (final approval granted in January 2020); *Pingston-*
22 *Poling v. Advia Credit Union*, United States District Court for the Western District of Michigan, Case
23 No. 1:15-CV-1208 (final approval granted in January 2020); *Ketner v. SECU Maryland*, Civil
24 No.:1:15-CV-03594-CCB (D. MD. 2017) (final approval granted January 11, 2018); *Towner v. Ist*
25 *MidAmerica Credit Union*, No. 3:15-cv-1162 (S.D. Ill. 2017) (final approval granted in November
26 2017); *Lane v. Campus Federal Credit Union*, Case No. 3:16-cv-00037 (M.D. La. 2017) (final
27 approval granted in August 2017); *Fry v. MidFlorida Credit Union*, United States District Court for
28 the Middle District of Florida, Case No. 8:15-CV-2743 (final approval granted); *Ramirez v. Baxter*

Credit Union, United States District Court for the Northern District of California, Case No. 16-cv-03765-SI (final approval granted); *Lynch v. San Diego County Credit Union*, San Diego County Superior Court, Case No. 37-2015-00008551 (final approval granted); *Gunter v. United Federal Credit Union*, United States District Court for the District of Nevada, Case No. 3:15-cv-00483-MMD-WGC (final approval granted); *Hernandez v. Point Loma Credit Union*, San Diego County Superior Court, Case No. 37-2013-00053519 (final approval granted); *Gray v. Los Angeles Federal Credit Union*, Los Angeles County Superior Court, Case No. BC625500 (final approval granted in); *Moralez v. Kern Schools Federal Credit Union*, Kern County Superior Court, Case No. BCV-15-100538 (final approval granted in June 2017); *Manwaring v. Golden 1 Credit Union*, Sacramento County Superior Court, Case No. 34-2013-00142667 (final approval granted); *Casey v. Orange County Credit Union*, Orange County Superior Court No. 30-2013-00658493-CJ-BT-CXC (final approval granted); *Sewell v. Wescom Credit Union*, Los Angeles County Superior Court No. BC5860 (final approval granted); *Fernandez v. Altura Credit Union*, Riverside County Superior Court, Case No. RIC1610873 (final approval granted); *Hernandez v. Logix Federal Credit Union*, Los Angeles County Superior Court, Case No. BC628495 (final approval granted); *Bowens v. Mazuma Federal Credit Union*, United States District Court for the Western District of Missouri, Case No. 15-00758-CV-W-BP (final approval granted); *Santiago v. Meriwest Credit Union*, Sacramento County Superior Court, Case No. 34-2015-00183730 (final approval granted); *Howard v. Sage Software*, Los Angeles County Superior Court Case No. BC487140 (final approval granted); *Kirtley v. Wadekar*, United States District Court for the District of New Jersey, Case No. 05-5383 (final approval granted); *Alston v. Pacific Bell*, Los Angeles County Superior Court Case No. BC297863 (final approval granted); *Oshaben v. Monster Worldwide, Inc., et al.*, San Francisco County Superior Court Case No. CGC-06-454538 (final approval granted); *Cole v. T-Mobile USA, et al.*, Central District of California Case No. 06-6649 (final approval granted).

5. This Court previously on July 19, 2024, issued a confirmation of an arbitration award brought by prior proposed class counsel (who is not class counsel in the present matter) in which the Court indicated preliminarily acceptance of the proposed \$1.4 million settlement involving the wage and hour class and PAGA issues in this case. That proposed settlement had been brought to this Court

1 for approval by the *Verdugo* plaintiff only. After learning of this, proposed class representatives
2 Jermaine Willis, Corey Devine, and Sheri King filed a Motion to Vacate and Intervene on January
3 10, 2025, pointing out what they believed to be issues with that \$1,400,000 amount. As a result,
4 Defendant agreed to attend a new mediation with these newly added class representatives before the
5 Honorable Amy D. Hogue of Signature Resolution. Before her retirement, Judge Hogue served a Los
6 Angeles County Superior Court judge for approximately twenty years, including seven years as a
7 judge of the Complex Litigation Division of the Los Angeles Superior Court, where she presided over
8 the approval of many wage and hour class actions and representative PAGA matters, and was also the
9 primary author of the Model Wage and Hour Class Action and PAGA Settlement Agreement used in
10 courts across the State of California.

11 6. On October 9, 2020, about three years before the *Saige* action was filed, Corey Devine
12 filed his complaint against Defendant in the Superior Court for the County of Los Angeles, bringing
13 claims based on Defendant's failure to provide required meal periods, failure to provide required rest
14 periods, failure to pay overtime wages, failure to pay minimum wages, failure to timely pay wages
15 during employment, failure to pay all wages due to discharged or quitting employees, failure to
16 provide itemized wage statements, failure to indemnify for necessary business expenditures, and
17 unlawful wage deductions. Mr. Devine filed a First Amended Complaint on January 12, 2021. In
18 response to the FAC, Defendant filed a demurrer and motion to strike on or about February 17, 2021,
19 which was fully briefed and argued on June 23, 2021. Mr. Devine filed a Second Amended Complaint
20 ("SAC") on July 13, 2021. Defendant filed an Answer to the SAC on August 23, 2021. On October
21 1, 2021, Defendant served discovery on Mr. Devine, to wit, 40 requests for production and a notice
22 for Mr. Devine's deposition. Mr. Devine served written responses to the requests for production and
23 produced 167 pages of documents on November 29, 2021. Mr. Devine served 31 special
24 interrogatories and 49 requests for production on Defendant. On April 8, 2022, Defendant filed a
25 Motion to Compel Arbitration, seeking to require Mr. Devine to arbitrate his claims against
26 Defendant. On May 25, 2022, the parties attended a mediation before Anthony F. Pantoni, Esq. of
27 Signature Resolution, which was unsuccessful. On August 23, 2022, Defendant filed an Amended
28 Motion to Compel Arbitration, arguing that Mr. Devine was required to arbitrate his claims under

1 *Viking River*. The motion was fully briefed and heard on January 19, 2023, and the court ordered Mr.
2 Devine to arbitrate his individual claims against Defendant while staying the representative PAGA
3 claims. Mr. Devine filed a demand for arbitration with the American Arbitration Association on
4 February 8, 2023. Class Counsel defended Mr. Devine's deposition and deposed Defendant's Person
5 Most Qualified. Following depositions and written discovery, the arbitration hearing was held on
6 April 9 and 10, 2024. Mr. Devine submitted a post-hearing brief on May 24, 2024; Defendant filed a
7 response on June 21, 2024; Mr. Devine filed a reply on June 21, 2024; and Mr. Devine filed a
8 supplemental brief on July 30, 2024. On August 19, 2024, the arbitrator issued an interim award,
9 finding that Mr. Devine was the prevailing party on several claims and an aggrieved employee. On
10 September 18, 2024, Mr. Devine filed a motion for attorneys' fees and costs, seeking reimbursement
11 for 331.4 hours of attorney work on the arbitration.

12 7. On March 15, 2022, Plaintiff Verdugo filed her complaint in the Superior Court for the
13 County of Los Angeles, bringing PAGA and class claims against Defendant. On May 9, 2022,
14 Defendant removed the *Verdugo* action to the U.S. District Court for the Central District of California.
15 The case is entitled *Verdugo, et al. v. Capstone Logistics, LLC, et al.*, Case No. 2:22-cv-03141-FMO-
16 E (the "*Verdugo* Action"). On October 19, 2022, Defendant filed a Motion to Compel Arbitration,
17 seeking to require Ms. Verdugo to arbitrate her claims against Defendant. On October 20, 2022, the
18 *Verdugo* parties filed a joint stipulation to continue the Motion to Compel Arbitration hearing,
19 informing the court that the parties had settled the matter. On November 23, 2022, Plaintiff Verdugo
20 filed a Motion for Preliminary Approval of a class and PAGA settlement between the parties for a
21 Gross Settlement Amount of \$1.4 million. The federal court denied the motion, and the motion was
22 re-filed on three subsequent occasions. Judge Olguin denied the motion a fourth time on July 13,
23 2023, and stated that although he would allow an additional Motion For Preliminary Approval to be
24 filed, it would need to be with an entirely new law firm representing the proposed class. There is
25 extensive briefing before this Court in Tuolumne County as a part of Plaintiffs Corey Devine's and
26 Jermaine Willis's and Sheri King's Motion to Vacate and Intervene recounting the details of the
27 denials by Judge Olguin. On August 11, 2023, Defendant filed a Motion to Compel Arbitration and
28 Dismiss the Complaint. On August 18, 2023, Plaintiff Verdugo file a Notice of Non-Opposition to

1 this motion. On August 22, 2023, the district court entered an order dismissing Plaintiff Verdugo's
2 Complaint without prejudice. On or about September 26, 2023, Plaintiff Verdugo served Defendant
3 with a Demand for Arbitration. On or about January 30, 2024, the *Verdugo* parties entered into a
4 Stipulated Settlement Agreement and Release of Claims, and Plaintiff Verdugo submitted a Motion
5 for Approval of Class Action and PAGA Settlement to the parties' selected arbitrator. On April 8,
6 2024, the arbitrator entered an award purporting to grant preliminary approval of the class action and
7 PAGA settlement. On April 22, 2024, the *Verdugo* parties filed a Joint Motion to Confirm Arbitration
8 Award in Tuolumne County Superior Court, seeking approval of this award. This Court entered an
9 order confirming the arbitrator's \$1.4 million award on July 19, 2024. On October 10, 2024, the
10 *Verdugo* parties filed a Notice of Related Cases in the *Devine* action. On January 10, 2025, Mr.
11 Devine and Ms. King filed a Motion to Vacate the court's July 19, 2024 Confirmation Order and
12 requested leave to intervene in the Tuolumne action. Defendant and Plaintiff Verdugo filed
13 oppositions to the Motion to Vacate on January 31, 2025; Mr. Devine filed a reply on February 6,
14 2025; and on February 13, 2025, this Court issued a tentative ruling vacating the July 19, 2024
15 Confirmation Order. At the February 14, 2025 hearing on Mr. Devine's Motion to Vacate, the Court
16 permitted supplemental briefing and granted leave to file a Complaint In Intervention. Mr. Devine
17 and Mr. Jermaine Willis filed their Complaint In Intervention on February 21, 2025, bringing class
18 action and PAGA claims for violation of the California Labor Code, and Ms. King filed her Complaint
19 in Intervention on June 2, 2025, also for PAGA violations. On March 14, 2025, Defendant and
20 Plaintiff Verdugo filed supplemental briefs in opposition to the Motion to Vacate, and on April 18,
21 2025, Mr. Devine filed a supplemental brief. A hearing on the Motion to Vacate was scheduled to
22 take place on May 2, 2025 before it was continued on two occasions to permit the parties to participate
23 in mediation.

24 8. On July 14, 2025, the parties to the Actions, as well as counsel for plaintiffs in a related
25 case, *Saige et al v. Capstone Logistics, LLC*, No. 5:24CV00195 (C.D. Cal.), participated in a
26 mediation before Judge Amy D. Hogue (Ret.). Specifically, on the plaintiffs' side, Tyler Dosaj and I
27 appeared on behalf of the putative class members and Aggrieved Employees through representatives
28 Jermaine Willis and Corey Devine; attorneys Larry Lee and Kristen Agnew appeared through Mr.

Escobar and Ms. King; and attorney James Treglio appeared on behalf of Plaintiff Verdugo. The matter did not settle on the day of the mediation, but Judge Hogue subsequently submitted a mediator's proposal to the parties in this *Verdugo* action, which the parties accepted. The resulting Settlement Agreement now before the Court reflects the terms of that mediator's proposal and provides for a \$5,950,000 Gross Settlement Amount, substantially higher than the prior proposed \$1,400,000 settlement.

9. Plaintiff Ivan Escobar filed the initial complaint in the *Escobar* action on November 9, 2020, bringing claims under PAGA for Capstone's failure to provide accurate itemized wage statements in San Joaquin County Superior Court. Capstone filed a notice of removal, which Mr. Escobar opposed, and the case returned to San Joaquin County Superior Court. Mr. Escobar then filed a First Amended Complaint. Capstone demurred to the First Amended Complaint on the grounds that the *Escobar* action should be stayed under the doctrine of exclusive concurrent jurisdiction in light of the earlier filed *Devine* action. Following briefing on the demurrer, Mr. Escobar and Capstone stipulated to the filing of a Second Amended Complaint. Mr. Escobar filed the Second Amended Complaint on March 30, 2022. On May 2, 2022, the court sustained Capstone's demurrer in part, staying the *Escobar* action.

10. Defendant has represented that the Class consists of 17,344 Capstone employees.

11. Defendant's own records appear to show that Class Members were subject to certain common policies and practices and paid according to uniform formulae, and appear to have been subject to the same employment policies and practices as other Class Members.

12. The interests of the named Plaintiffs, in my opinion, are not antagonistic to those of other Class Members, but are aligned as they were subject to the same employment policies and practices. Moreover, Plaintiffs have actively participated in the Actions and understand their responsibility to assist Class Counsel in prosecuting the Actions on behalf of the Class.

13. Certification of the Class for settlement purposes, I believe, is superior here because there will be a global resolution of all claims at once, which fosters judicial economy.

14. The investigation and discovery conducted in this matter have been adequate to give the Plaintiffs and Class Counsel a sound understanding of the merits of their position, Defendant's

1 defenses, and to evaluate the reasonable value range of the claims of the Class. Both before and after
2 initiating the Action on behalf of the putative class, Class Counsel diligently investigated the claims
3 alleged and conducted legal research regarding Defendant's potential liability and defenses. In the
4 *Devine* arbitration, the parties exchanged written discovery, and Capstone produced over 1,700 pages
5 of documents relevant to Mr. Devine's claims, including contracts and policy documents. For
6 mediation purposes, Defendant produced a random sample of time and pay records showing payment
7 of wages, overtime, meal and rest break premiums, and business expenses, which amounted to
8 144,155 rows of data. Defendant also provided information regarding the number of non-exempt
9 workers, number of workweeks, and average rates of pay for relevant periods. Class Counsel
10 analyzed this data with expert assistance to evaluate the potential damages and penalties at issue in
11 the Actions. The July 14, 2025 mediation before Judge Hogue proceeded against the backdrop of this
12 data and damages analysis, which permitted the parties to negotiate with an objective view of
13 Defendant's potential liability exposure.

14 15. Settlement negotiations at all times were at arm's length, adversarial, and devoid of any
15 collusion. Class Counsel have extensive experience litigating wage and hour class and PAGA actions
16 such as this one, and this helped counsel to make an informed assessment of the strengths and
17 weaknesses of the instant case. As discussed above, the Settlement was reached following two
18 separate mediation sessions, and was the result of a mediator's proposal by Judge Hogue. Attorneys
19 Karen Gold and Jonathan M. Genish of Blackstone Law, APC, counsel for Jacob Saige and Reginald
20 McOwens in the *Saige* action, were present at the July 14, 2025 mediation before Judge Hogue, but
21 were not involved in accepting the mediator's proposal. Judge Hogue was informed of the *Saige*
22 court's ruling denying Capstone's motion to compel arbitration. Accordingly, this information was
23 baked into Judge Hogue's proposal that the parties settle the Actions for \$5,950,000. I believe the
24 proposed settlement is fair and reasonable, and I support it.

25 16. Based on my consultations with co-counsel Larry Lee and Kristen Agnew, as well as
26 internal consultations at this law firm, and the work-product protected consultations with wage-and-
27 hour economics consulting firms, Class Counsel's analysis of the sample data provided by Defendant
28 and legal analysis of the strength of the claims, I believe the following is a reasonable estimate of

Defendant's potential exposure in the Actions:

Claim	Maximum Exposure	Discounted Exposure
Failure to Provide Required Meal Periods	\$13,545,071.26	\$1,354,507.13
Failure to Provide Required Rest Periods	\$14,356,245	\$717,812.25
Failure to Pay Overtime and Minimum Wages	\$2,334,071.95	\$2,100,664.75
Failure to Pay All Wages Due to Discharged or Quitting Employees	\$57,946,591.66	\$5,794,659.17
Failure to Provide Accurate Itemized Wage Statements	\$10,875,957.07	\$2,175,191.41
Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties		\$867,200
PAGA Penalties	\$48,324,716.10	\$2,416,235.80
TOTAL	\$147,382,653.04	\$15,426,270.51

These calculations were based on a Class Member count of 17,344, with 541,929 workweeks, and an average hourly rate of pay of \$19.58. Further, the assumed violation rate for the meal and rest period claims was 31.2%; the assumed amount of business expenses for reimbursement per pay period was denied by Defendant and therefore estimated at \$50 per class member; and 12,331 former employees were estimated to be eligible for waiting time penalties.

17. Plaintiffs' allegations that Defendant failed to pay all minimum and overtime wages owed were based, in part, on the allegation that Defendant required, permitted, or suffered Settlement Class Members to perform work off the clock. Although Plaintiffs contend that these claims were supported

1 by the evidence, they presented substantial litigation and certification risks.

2 18. With regard to the rest breaks, information revealed Defendant did not require recording
3 the start and finish times of the rest breaks, and as such in my opinion might make the certification of
4 that issue more challenging.

5 19. Regarding the expense reimbursement claim, Defendant denied any requirement for cell
6 phone use.

7 20. Plaintiffs' waiting time claims also carried litigation risks because they were derivative of
8 Plaintiffs' underlying wage and hour theories, including the alleged failure to provide compliant meal
9 and rest periods and the alleged failure to pay all overtime and minimum wages for off-the-clock work.
10 Defendant would likely argue that, if Plaintiffs could not establish the predicate violations on a
11 classwide basis, the derivative timely payment and waiting time penalty claims would likewise fail or
12 be substantially reduced. I believe the waiting time penalty claim under Labor Code section 203
13 presented an additional risk because Plaintiffs would have been required to establish that any failure
14 to pay final wages was willful. Plaintiffs also alleged that Defendant failed to provide accurate
15 itemized wage statements in violation of Labor Code section 226. Although Plaintiffs maintain that
16 these claims had merit, the wage statement claims also presented litigation risks. To the extent the
17 claims were derivative, Defendant would likely argue that the wage statement claims rose or fell with
18 the underlying meal period, rest period, overtime, and minimum wage claims. Further, to recover
19 penalties under Labor Code section 226(e), Defendant would argue Plaintiffs would also have to
20 establish that the alleged violation was knowing and intentional and that employees suffered injury
21 within the meaning of the statute. Although Plaintiffs contend that Defendant's wage statement
22 violations were knowing and intentional, for settlement purposes, Plaintiffs recognized the risk that
23 Defendant could persuade the Court that its interpretation of the wage statement requirements was
24 objectively reasonable, or that any alleged inaccuracies were derivative of disputed underlying wage
25 claims rather than the result of a knowing and intentional failure to provide compliant wage statements.

26 21. It is my estimate that further litigation would likely cost hundreds of thousands of dollars.
27 Capstone possesses substantial resources to defend the Actions and is defended by Duane Morris LLP,
28 a very experienced employment litigation defense firm. The arbitration in the *Devine* action alone cost

1 \$233,545 in attorneys' fees and \$18,706.02 in litigation expenses. In this case, Plaintiffs still would
2 need to move for class certification and prevail, then likely defeat a motion for summary judgment,
3 then still prevail at trial, were the matter to continue. Whichever side did not prevail at trial likely
4 would appeal, resulting in hundreds of hours of additional attorney time and tens of thousands of
5 dollars in additional attorneys' fees and costs. The *Devine* action was filed on October 9, 2020, over
6 five years ago, and this additional litigation activity would likely consume further years. In contrast,
7 the proposed Settlement provides immediate relief to the Class without the uncertainty and burden and
8 delay of these likely events.

9 22. Plaintiff Devine provided proper notice to the LWDA and Capstone prior to the filing of
10 the *Devine* action via letter on August 4, 2020, 65 days before the filing of the initial complaint on
11 October 9, 2020. This letter included the factual material required by Labor Code § 2699.3 alerting
12 the LWDA and Capstone to the nature of the alleged violations. As of the filing of this Motion, this
13 Motion and the Settlement Agreement will have been uploaded to the Department of Industrial
14 Relations' PAGA Filing Portal.

15 23. None of the attorneys at The Kick Law Firm, APC, are involved in the governance of
16 Public Citizen nor on its Board of Directors.

17 24. The notice was provided in English and Spanish.

18 25. Class Counsel put the administration of this notice program out for bid to two class action
19 administrators with experience in wage and hour class action settlement administration, and the lower
20 of the two bidders is Phoenix Class Action Administration Solutions ("Phoenix"), which has
21 confirmed its costs are \$65,950 in its concurrently filed declaration.

22 26. The Kick Law Firm, APC undertook this case on a contingent basis, with the
23 understanding that the firm would not be compensated for its efforts unless the case was successful.
24 To date, TKLF has not been paid for any of its time spent on this matter. The time spent on this matter
25 by the firm's attorneys has required considerable work that could have, and would have, been spent
26 on other billable matters. As a result of having accepted and been devoted to this case, it is my informed
27 belief this law firm wound up not representing parties in cases it otherwise would have, and which in
28 my opinion likely would have compensated this firm at its hourly rates requested in this matter.

1 27. As detailed in their concurrently filed declarations and/or in their declarations in support
2 of preliminary approval, Plaintiffs made significant contributions to the success of this lawsuit for the
3 Class, undertook reputational risks, and expended time and effort on behalf of the Class. Among other
4 things, the Plaintiffs provided essential information for the prosecution of this action and in connection
5 with negotiations and settlement, gathered and provided pertinent documents, took time to participate
6 in phone calls with counsel, and reviewed the settlement documents. At no time did Plaintiffs ever
7 have a guarantee of any personal benefit as a result of this case. Plaintiff Devine in particular has been
8 actively involved in this matter for about five years and has expended substantial time and effort to
9 prepare for and appear at his arbitration hearing. The reason for the higher requested award for Mr.
10 Devine is that not only is he the only representative who was deposed in this matter, but he also
11 appeared for and testified at the binding PAGA arbitration in this matter, including spending additional
12 days preparing for it. Mr. Devine's efforts materially assisted Class Counsel in evaluating the strengths
13 and risks of the claims, developing the evidentiary record, and ultimately achieving the Settlement
14 now before the Court.

15 28. Judge Hogue was aware of the *Saige* action and the denial of Capstone's motion to compel
16 arbitration therein when she developed the mediator's proposal that resulted in this Settlement.

17 29. The law firms involved in this matter have reached a proposed agreement regarding fee-
18 sharing. I do not believe the agreement has caused the requested fees in this matter to be higher than
19 they otherwise would be. In fact, the fees being requested are one-third, and in many wage and hour
20 class actions I am aware the attorneys representing the plaintiffs often request a 35% fee award rather
21 than 33-1/3%, including in cases in which there was a lot less work performed than in this case, and a
22 lot less complexity than in this case. Regarding the specifics of the fee-sharing, the attorneys intend
23 to share fees as follows: a.) \$150,000.00 shall be paid to TKLF; b.) \$350,000.00 shall be paid to Potter
24 Handy, through Diversity Law Group ("DLG") arising from its work; c.) Dambacher, Trujillo &
25 Associates, APLC will be paid its lodestar from the court's total attorneys' fee award; (d.) after
26 subtracting the amounts in (a) and (b) and (c), the remaining net amount would be paid 41.255% to
27 DLG and 58.745% to TKLF, and from TKLF's net share TKLF would pay The Law Office of Nick
28 Rosenthal 30% of TKLF's net fees. This firm's clients Mr. Willis and Mr. Devine have provided

1 written consent to fee sharing. I am informed by Mr. Lee, co-class counsel, that his clients and Mr.
2 Treglio's client also have agreed in writing to fee sharing in this matter.

3 30. On October 20, 2025, the plaintiffs in *Saige et al. v. Capstone Logistics, LLC*, No. 5:24-
4 cv-00195 (C.D. Cal.) filed a motion to intervene in the *Verdugo* Action (the "Saige Motion to
5 Intervene"). Plaintiffs and Capstone opposed the Saige Motion to Intervene. On October 31, 2025,
6 Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement and Approval of
7 PAGA Representative Settlement (the "Motion for Preliminary Approval"). On April 10, 2026, the
8 Court heard both the Saige Motion to Intervene and the Motion for Preliminary Approval. After
9 considering the papers and extensive oral argument, the Court granted preliminary approval of the
10 Settlement and denied the Saige Motion to Intervene.

11 31. Attached hereto as Exhibit 1 is a true and correct copy of the Verdugo Settlement
12 Agreement and Release, fully signed on October 13, 2025.

13 32. Attached hereto as Exhibit 2 is a true and correct copy of the Devine Second Amended
14 Complaint, filed on July 13, 2021.

15 33. Attached hereto as Exhibit 3 is a true and correct copy of the Interim Award of
16 Arbitrator, in *Devine v. Capstone Logistics, LLC*.

17 34. Attached hereto as Exhibit 4 is a true and correct copy of the Final Award of Arbitrator,
18 dated January 3, 2025, granted in *Devine v. Capstone Logistics, LLC*.

19 35. Attached hereto as Exhibit 14 is a true and correct copy of the Devine Letter to LWDA,
20 dated August 4, 2020.

21 36. Attached hereto as Exhibit 15 is a true and correct copy of the LWDA Payment
22 Confirmation, from August 4, 2020, representing the fee for the Initial PAGA Notice filing.

23 37. Attached hereto as Exhibit 17 is a true and correct copy of the Class Notice.

24 38. Attached hereto as Exhibit 18 is a true copy of Phoenix's settlement administration
25 resume.

26 39. Attached hereto as Exhibit 19 is a true copy of the costs incurred by The Kick Law
27 Firm in this case.
28

1 40. Attorney Larry Lee from DLG has reported to me that his firm's litigation expenses in
2 this matter are \$12,088.48. Mr. Lee also has reported to me that the litigation expenses of Potter Handy,
3 LLP are \$15,882.16. Attorney Gary Dambacher of Dambacher, Trujillo & Associates, APLC reported
4 to me that the litigation expenses incurred by his firm equal \$40 for filing fees. I am informed by this
5 law firm's bookkeeper that the litigation expenses incurred by the firm equal \$76,746.55, comprised
6 of \$76,681.55 incurred to date, and an additional \$65 for future filing fees. A true and correct copy of
7 my firm's litigation expenses is attached to this declaration as Exhibit 19.

8 41. The Kick Law Firm's lodestar in this matter to date equals approximately \$1,330,362.
9 This is comprised of 551 hours of my time at the rate of \$1,057 per hour, meaning \$582,407; 23.2
10 hours of work by Ms. Davis at the rate of \$777 per hour, meaning \$18,026; 269.2 hours of work by
11 Mr. Dosaj at the rate of \$777 per hour, meaning \$209,168; 258.8 hours by Mr. Rosenthal, which at the
12 rate of \$700 per hour equals \$181,160; 204.7 hours by Mr. Taylor, which at the rate of \$650 per hour
13 equals \$133,055; 84.6 hours by Roy Suh, which at the rate of \$650 per hour equals \$54,990; 65.6
14 hours by Karen Wallace, which at the rate of \$650 per hour equals \$42,640; 4.8 hours by Jeffrey Bils,
15 which at the rate of \$650 per hour equals \$3,120; 50.9 hours by Ryan Tish, which at the rate of \$650
16 per hour equals \$33,085; 46.4 hours by Daniel Bass, which at the rate of \$650 per hour equals \$30,160;
17 and 170.2 hours by paralegal Alina Muresan, which at the rate of \$250 per hour equals \$42,550. This
18 firm's lodestar also does not include further time Ms. Davis and I will spend preparing for and
19 attending the Hearing on the Motion for Final Approval, and working with the Administrator after
20 final approval is granted, which I estimate as at least an additional 15 hours.
21

22 41. Notice of any final order or judgment in this matter will be disseminated to the Class via
23 the settlement website.

24 I declare under penalty of perjury under the laws of the state of California that the foregoing
25 is true and correct.

26 Executed this 30th day of June, 2026, in Los Angeles, California.

27 
28 _____
Taras Kick

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (the “Agreement”) is hereby entered into by Capstone Logistics, LLC (“Capstone” or “Defendant”) on the one hand, and Corey J. Devine (“Devine”), Jermaine Willis (“Willis”), Ivan Escobar (“Escobar”), Sheri King (“King”), and Andrea Otanez Verdugo (“Verdugo”) (collectively “Plaintiffs”), on the other hand, for themselves and on behalf of the Settlement Class (as defined below), the PAGA Representative Group (as defined below), and the State of California. Capstone and Plaintiffs are collectively the “Parties.” The Parties have agreed to settle all pending litigation and arbitration proceedings between them as follows:

I. DEFINITIONS

As used in this Settlement, the following terms shall have the following meanings:

- A. “Actions” means the Devine PAGA Action, the Devine Arbitration, the Escobar Action, the Verdugo Class and PAGA Action, the Verdugo Arbitration, and the Tuolumne Proceedings.
- B. “Administrator” or “Settlement Administrator” means Phoenix Class Action Administration Solutions (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- C. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount, subject to approval by the Court, to reimburse its reasonable fees and expenses.
- D. “Class Counsel” means Taras Kick and Tyler Dosaj of The Kick Law Firm, APC; and Larry Lee and Kristen Agnew of Diversity Law Group.
- E. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and costs, respectively, as and to the extent approved by the Court.
- F. “Class Data” means the following information for each Settlement Class Member: name, last-known phone number, last-known residence mailing address, Social Security number, number of Workweeks and PAGA Pay Periods, as compiled by Defendant based on its payroll records.
- G. “Class Member Address Search” means the Administrator’s investigation and search for Settlement Class Members using the National Change of Address database.
- H. “Class Notice” means the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members in the form, without material variation, attached as Exhibit A to this Agreement.
- I. “Class Period” means the period from August 1, 2019, through and including July 25, 2025.

- J. “Class Representatives” means Willis, Devine, Escobar, King, and Verdugo, who are the named Plaintiffs in the Actions and who are seeking Court approval to serve as Class Representatives.
- K. “Court” means the Superior Court of California, County of Tuolumne.
- L. “Defendant” means Capstone Logistics, LLC.
- M. “Defense Counsel” means Gerald L. Maatman, Jr., Jennifer A. Riley, and Jim Brown of Duane Morris, LLP.
- N. “Devine PAGA Action” means *Devine v. Capstone Logistics, LLC*, No. 20STCV39030, Los Angeles Superior Court.
- O. “Devine Arbitration” means the arbitration initiated by Devine following the grant of the motion to compel arbitration in the Devine PAGA Action.
- P. “Effective Date” means the later of 30 days after: (1) the Court’s final approval of the Settlement Agreement, if no objections have been lodged; (2) if an objection has been lodged, the time for an appeal has expired without the filing of any appeal; or (3) the final resolution of any appeal, writ, or challenge to the Settlement that has been lodged upholding the Settlement.
- Q. “Escobar Action” means *Escobar v. Capstone Logistics, LLC*, No. STK-CV-UOE-2020-0009429, San Joaquin Superior Court.
- R. “Final Approval” means entry of the Court’s order granting final approval of the Settlement and entering judgment in accordance with the terms of this Agreement.
- S. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement to determine whether to finally approve and implement the terms of this Agreement, grant final approval, and enter the Final Approval Order and Final Judgment.
- T. “Gross Settlement Amount” means Five Million Nine Hundred and Fifty Thousand Dollars (\$5,950,000), which is the maximum total amount to be paid by Defendant in connection with this Agreement. The Gross Settlement Amount will be used to pay all Participating Class Member Payments, the PAGA Settlement Payment, Service Awards, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment.
- U. “Individual PAGA Payment” means the portion of the PAGA Settlement Payment allocated to an individual member of the PAGA Representative Group pursuant to paragraph IV.B herein.
- V. “LWDA” refers to the California Labor & Workforce Development Agency.

- W. “LWDA Notices” means the Devine LWDA Notice, Escobar LWDA Notice and Verdugo LWDA Notice.
- X. “LWDA PAGA Payment” means the sixty-five percent (65%) of the PAGA Settlement Payment to be paid to the LWDA in accordance with Labor Code section 2699, subd. (i).
- Y. “Net Settlement Fund” means the amount of monies remaining from the Gross Settlement Amount after deducting the Court-approved Service Awards, PAGA Settlement Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment.
- Z. “Non-Participating Class Member” means a Settlement Class Member who opts out of the Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- AA. “PAGA” refers to the Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*
- BB. “PAGA Pay Period” means any pay period during the Class Period in which a Settlement Class Member worked for Defendant as a non-exempt employee for at least one day.
- CC. “PAGA Representative Group” means all current and former employees who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through July 25, 2025.
- DD. “PAGA Settlement Payment” means Two Hundred Fifty Thousand Dollars (\$250,000), which is the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, sixty-five percent (65%) of which is payable to the LWDA (\$162,500), and thirty-five percent (35%) of which shall be allocated to the PAGA Representative Group (\$87,500) in accordance with Paragraph IV.B.
- EE. “Participating Class Member” means Settlement Class Members who do not submit a valid and timely Request for Exclusion.
- FF. “Participating Class Member Payment” means payments from the Net Settlement Fund to Participating Class Members as described in Paragraph IV.B herein.
- GG. “Plaintiffs” collectively refers to Willis, Devine, Escobar, King, and Verdugo, the named Plaintiffs in the Actions.
- HH. “Parties” collectively refers to Plaintiffs and Defendant.
- II. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of the Settlement.

- JJ. “Released Class Claims” means any and all claims, known or unknown, that were asserted in any and/or all of the LWDA Notices or complaints in the Actions, or that could have been asserted in any and/or all of the LWDA Notices or complaints in the Actions based on the facts and allegations alleged in any complaint or LWDA Notice in the Actions. The Released Class Claims are expressly limited to claims arising during the Class Period, and no claims outside the Class Period are released by this Agreement. The Released Class Claims include but are not limited to all claims that were asserted in the Actions, whether or not specifically delineated as a claim or cause of action in the Actions, including claims for unpaid wages, including failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation; the calculation of the regular rate of pay; reimbursement for business expenses; payment for all hours worked, including off-the-clock work; inaccurate or incomplete wage statements; improper or unauthorized deductions; failure to keep accurate records; unfair business practices; failure to provide meal periods or rest breaks; unpaid meal period or rest break premiums; failure to timely pay wages due during or at separation of employment; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and interest, attorneys’ fees, and costs. The Released Class Claims include but are not limited to claims arising under the California Labor Code including, but not limited to, sections 200-206, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, 204.2, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698 et seq., 2699 et seq., 2800, 2802 et seq., 2810, 2810.3, the Wage Orders of the California Industrial Welfare Commission, including but not limited to IWC Wage Order Nos. 4, 5 and 9 (Cal. Code Regs., tit. 8, § 11050), the California Private Attorneys General Act of 2004 (“PAGA”), the California Business and Professions Code section 17200, et seq., 12 CCR § 11040, 8 CCR § 11060, and the California common law.
- KK. “Released PAGA Claims” means any and all claims, known or unknown, that were asserted in any and/or all of the LWDA Notices or complaints in the Actions, or that could have been asserted in any and/or all of the LWDA Notices or complaints in the Actions based on the facts and allegations alleged in any complaint or LWDA Notice in the Actions. The Released PAGA Claims are expressly limited to claims arising during the Class Period, and no claims outside the Class Period are released by this Agreement. The Released PAGA Claims include but are not limited to all claims that were asserted in the Actions, whether or not specifically delineated as a claim or cause of action in the Actions, including claims for civil penalties relating to, based upon, or arising out of the Released Parties’ alleged failure to properly pay all wages due, provide minimum wages, straight time compensation, overtime compensation, or double-time compensation; failure to properly calculate the regular rate of pay; failure to reimburse business expenses; failure to pay for all hours worked, including off-the-clock work; failure to issue accurate or complete wage statements; alleged improper or unauthorized deductions; failure to keep accurate records; failure to provide meal periods or rest breaks; unpaid meal period or rest break premiums; failure to timely pay wages due during or at separation of employment; claims for penalties, including,

- but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for interest, attorneys' fees, and costs. The Released PAGA Claims include but are not limited to claims arising under the California Labor Code including, but not limited to, sections 200-206, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, and 204.2, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 1193.6, 2698 et seq., 2699 et seq., 2800, 2802 et seq., 2810, 2810.3, the Wage Orders of the California Industrial Welfare Commission, including but not limited to IWC Wage Order Nos. 4, 5 and 9 (Cal. Code Regs., tit. 8, § 11050), the California Private Attorneys General Act of 2004 ("PAGA"), 12 CCR § 11040, 8 CCR § 11060, and the California common law.
- LL. "Released Parties" shall mean Capstone Logistics, LLC and any of its parents, subsidiaries, affiliates, customers, business partners, predecessors or successors, and all agents, employees, officers, directors, and attorneys thereof.
- MM. "Request for Exclusion" means a Settlement Class Member's timely and valid submission of a written request to be excluded from the Settlement, signed by the Class Member, as provided in this Agreement.
- NN. "Response Deadline" means the last date on which Settlement Class Members may: (a) submit Requests for Exclusion from the Settlement; or (b) submit an Objection to the Settlement. Class Members to whom the Class Notice is re-sent after having been returned undeliverable to the Administrator shall have their Response Deadline extended an additional fourteen (14) days beyond the thirty (30) days otherwise provided in the Class Notice.
- OO. "Service Award" means a payment, as and to the extent approved by the Court, that the Plaintiffs are to be paid for their time and effort spent conferring with Class Counsel, pursuing the Actions, and in recovering wages on behalf of the Settlement Class Members.
- PP. "Settlement" means the resolution of the Actions effected by this Agreement and the final judgment entered by the Court.
- QQ. "Settlement Class" means all current or former employees who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through and including July 25, 2025.
- RR. "Settlement Class Member" means any current or former employee who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through and including July 25, 2025.
- SS. "Tuolumne Proceedings" means *Verdugo v. Capstone Logistics LLC*, No. CV66120, Tuolumne County Superior Court.

- TT. “Verdugo Arbitration” means the arbitration initiated between Verdugo and Capstone following the Central District of California’s grant of the motion to compel arbitration in the Verdugo Class and PAGA Action.
- UU. “Verdugo Class and PAGA Action” means *Verdugo, et al. v. Capstone Logistics, LLC, et al.*, Case No. 2:22-cv-03141-FMO-E, Central District of California.
- VV. “Workweek” means any workweek during the Class Period in which a Settlement Class Member worked for Defendant as a non-exempt employee for at least one day.

II. RECITALS

WHEREAS, on August 4, 2020, Devine filed a notice with the California Labor and Workforce Development Agency (“LWDA”), informing the LWDA of his alleged individual claims under the California Labor Code (“Labor Code”), including for alleged unpaid minimum and overtime wages, meal and rest break violations, inaccurate wage statements, unpaid business expenses, failure to timely pay all wages during employment and at separation of employment, and for unlawful deductions from wages, and stating his desire to represent all current and former non-exempt employees who worked for Capstone within the State of California pursuant to the California Private Attorneys General Act (“PAGA”) (the “Devine LWDA Notice”);

WHEREAS, on October 9, 2020, Devine filed a PAGA representative action in Los Angeles Superior Court against Capstone, entitled *Devine, et al. v. Capstone Logistics, LLC, et al.*, Case No. 20STCV39030, seeking civil penalties on the following theories of liability: (1) failure to provide meal breaks; (2) failure to authorize and permit rest breaks; (3) failure to pay overtime; (4) failure to pay minimum wages; (5) failure to timely pay wages; (6) failure to timely pay wages at separation of employment; (7) provision of inaccurate wage statements; (8) failure to reimburse business expenses; and (9) unlawful deductions from wages;

WHEREAS, on January 19, 2023, the Devine Court granted Capstone’s motion to compel arbitration, and Devine thereafter initiated an arbitration proceeding. A hearing was then held, and, on January 3, 2025, the arbitrator issued a Final Award rejecting some and accepting one of Devine’s individual claims. Capstone’s motion to vacate the arbitrator’s Final Award is currently pending with the Los Angeles Superior Court in the Devine PAGA Action;

WHEREAS, on October 30, 2020, Escobar filed a notice with the LWDA, informing the LWDA of his alleged individual claims under the Labor Code for inaccurate wage statements and stating his desire to represent all current and former non-exempt employees who worked for Capstone within the State of California pursuant to PAGA (the “Escobar LWDA Notice”);

WHEREAS, on November 9, 2020, Escobar filed a putative class and PAGA representative action in San Joaquin Superior Court against Capstone, entitled *Escobar, et al. v. Capstone Logistics, LLC, et al.*, Case No. STK-CV-UOE-2020-0009429, seeking damages and civil penalties, and then filed a First Amended Complaint and then a Second Amended Complaint alleging a PAGA representative action seeking civil penalties for the alleged provision of inaccurate wage statements;

WHEREAS, in 2022, Verdugo filed a notice with the LWDA, informing the LWDA of his alleged individual claims under the Labor Code for alleged unpaid minimum and overtime wages, meal and rest break violations, inaccurate wage statements, unpaid business expenses, failure to timely pay all wages during employment and at separation of employment, and for unlawful deductions from wages, and stating his desire to represent all current and former non-exempt employees who worked for Capstone within the State of California pursuant to PAGA (the “Verdugo LWDA Notice”);

WHEREAS, on March 15, 2022, Verdugo filed a putative class and PAGA representative action Complaint in Los Angeles Superior Court against Capstone, and the case was then removed to the U.S. District Court for the Central District of California and is entitled *Verdugo, et al. v. Capstone Logistics, LLC, et al.*, Case No. 2:22-cv-03141-FMO-E. A First Amended Class And PAGA Representative Action Complaint was filed on November 23, 2022, alleging putative class claims under the Labor Code for: (1) failure to provide meal breaks; (2) failure to authorize and permit rest breaks; (3) failure to pay for all hours worked; (4) failure to pay overtime wages; (5) provision of inaccurate wage statements; (6) failure to timely pay wages; (7) failure to timely pay wages at separation of employment; (8) unlawful deductions from wages; (9) failure to maintain payroll records; and (10) failure to reimburse business expenses. Verdugo asserted an eleventh cause of action for alleged violation of Business & Professions Code section 17200 et seq., and a twelfth cause of action under PAGA;

WHEREAS, the U.S. District Court for the Central District of California granted Capstone’s motion to compel arbitration, and the Verdugo Class and PAGA Action was then dismissed and Judgment entered, and the matter and First Amended Complaint were then refiled in arbitration in the action entitled *Verdugo, et al. v. Capstone Logistics, LLC*. A settlement was then reached and a settlement agreement executed between Verdugo and Capstone (the “Verdugo Settlement Agreement”), and the Verdugo Settlement Agreement was then approved by an arbitrator. A motion to confirm that arbitration award was then granted by the Tuolumne County Superior Court in the case entitled *Verdugo v. Capstone Logistics, LLC*, Case No. CV66120E. Devine’s motion to reconsider the order confirming the arbitration award is presently pending in the Tuolumne Proceedings, and a Motion to Intervene was granted, with complaints in Intervention filed by Willis and Devine, and a Complaint In Intervention also filed by King.

WHEREAS, the Parties have agreed to settle the Devine PAGA Representative Action, the Devine Arbitration, the Escobar Action, the Verdugo Class and PAGA Action, the Verdugo Arbitration Action, and the Tuolumne Proceedings.

NOW THEREFORE, to effectuate the purposes of this Agreement, the Parties agree that the Actions shall be settled and compromised subject to the terms and conditions set forth in this Agreement and the approval of the Court as follows:

III. NON-ADMISSION OF LIABILITY

- A. Based on the factual and legal issues involved, the expense and time necessary to prosecute the Actions, the risks, uncertainty, and costs of further prosecution, the difficulty of proof necessary to establish class and PAGA representative actions for

purposes of liability, and the relative benefits to the Settlement Class Members of an expeditious resolution of the Actions, the Parties have concluded that the terms set forth in this Settlement are fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

- B. By entering into this Settlement, Defendant denies any liability for any of the claims in the Actions, as well as any other potential or unknown claims based on wage and hour violations under state or federal law. Neither this Settlement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as, an admission, concession, or indication by or against Defendant of any unlawful conduct, fault, wrongdoing or liability whatsoever. Defendant specifically denies engaging in any unlawful or wrongful conduct against Plaintiffs and Settlement Class Members. Rather, Defendant maintains that it complied with, at all times, all applicable laws governing wages and hours of work for its employees.

IV. MONETARY TERMS OF THE SETTLEMENT

- A. Gross Settlement Amount: Defendant will pay Five Million Nine Hundred and Fifty Thousand Dollars (\$5,950,000) in connection with this Settlement. Subject to the escalator clause terms and conditions of Paragraph V-A of this Agreement, this amount is the maximum total amount to be paid by Defendant in connection with this Agreement and is all-inclusive of all payments contemplated in this Settlement. Defendant shall separately pay employer-side payroll taxes owed on the portion of Participating Class Member Payments classified as wages as set forth herein. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Settlement Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- B. Payments from the Gross Settlement Amount: Subject to the terms and conditions of this Agreement, and subject to final approval by the Court, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in its order granting Final Approval. The Settlement is not contingent on the payment of any of the following amounts. In other words, the Court's decision to award any of the following payments and the amount of those awards, if any, shall not affect the enforceability of the Settlement.
 - 1. To Plaintiffs: Subject to approval by the Court, Plaintiffs shall receive Service Award payments from the Gross Settlement Amount as follows: Twenty-Five Thousand Dollars (\$25,000) to Devine; Ten Thousand Dollars (\$10,000) to Willis; Ten Thousand Dollars (\$10,000) to King; Ten Thousand Dollars (\$10,000) to Escobar; and Ten Thousand Dollars (\$10,000) to Verdugo. The Service Awards shall be in addition to any Participating Class Member Payments and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member or member of the PAGA Representative Group. Defendant shall not oppose applications for Service Awards in these amounts consistent with applicable law, in consideration for each Plaintiff's service to the

case and each Plaintiff's provision of a general release of any and all claims, known or unknown, contingent or accrued, including a California Civil Code section 1542 waiver against the Released Parties, arising out of any act or event that occurred prior to the execution of the general release. To receive the Service Award, each Plaintiff must sign a separate settlement agreement and general release of all claims, and such agreement must be approved by the Court. The Plaintiffs, and each of them, agree to accept whatever Service Award the Court orders, even if it is less than the amount specified in this paragraph. If the Court approves Service Awards in an amount that is less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Fund. The Settlement Administrator will issue appropriate tax forms to the Plaintiffs reflecting the payments of their respective Service Awards. The Administrator will report any Service Award to Plaintiffs using an IRS Form 1099. Plaintiffs assume full responsibility and liability for any taxes owed on their respective Service Awards.

2. To Class Counsel: Subject to approval by the Court, Class Counsel shall receive a Class Counsel Fees Payment equal to one-third (33-1/3%) of the Gross Settlement Amount, which is currently estimated to be One Million Nine Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$1,983,333.33) and a Class Counsel Litigation Expenses Payment for reimbursement of reasonable litigation costs, as approved by the Court. Defendant shall not oppose Plaintiffs' request for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, provided that they do not exceed these amounts, consistent with applicable law. The Administrator shall pay Court-approved fees and costs to Class Counsel from the Gross Settlement Amount ten (10) business days after the Effective Date. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Fund. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. This Settlement is not contingent on the award of Class Counsel Fees Payment or Class Counsel Litigation Expenses Payment. The Administrator will report the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel using one or more IRS Form 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division, taxation, or sharing of any of these payments.
3. To the Administrator: Subject to the Court's approval, the Settlement Administrator will receive an Administration Expenses Payment in an amount not to exceed Sixty-Five Thousand Nine Hundred and Fifty Dollars (\$65,950) except for a showing of good cause and as approved by the Court. To the extent the Administrator's expenses are less or the Court approves payment less than \$65,950, the Administrator will allocate the remainder to the Net Settlement

Fund. If the Court approves additional payment to the Administrator, the payment shall be made from the Gross Settlement Fund, and Defendant shall not be required to pay any additional funds as part of the Settlement.

4. PAGA Settlement Payment: The Settlement Administrator will pay the PAGA Settlement Payment in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) from the Gross Settlement Amount. Sixty-five percent (65%) of PAGA Settlement Payment (\$162,500) is payable to the LWDA. The remaining thirty-five percent (35%) of the PAGA Settlement Payment (\$87,500) shall be allocated to the PAGA Representative Group.

The Administrator will calculate each Individual PAGA Payment by: (a) dividing the amount of the PAGA Representative Group's 35% share of PAGA Settlement Payment by the total number of PAGA Period Pay Periods worked by the PAGA Representative Group during the Class Period; and (b) multiplying the result by each PAGA Representative Group member's respective PAGA Period Pay Periods. PAGA Representative Group members assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

The Administrator will report the Individual PAGA Payments on IRS Form 1099 as required

5. To Each Participating Class Member: The Net Settlement Fund shall be allocated among Participating Class Members. The Administrator will calculate each Participating Class Member Payment by: (a) dividing the Net Settlement Fund by the total number of Workweeks worked by Participating Class Members during the Class Period; and (b) multiplying the result by the number of Workweeks worked by each Participating Class Member during the Class Period.

For tax purposes, a Participating Class Member Payment issued from the Net Settlement Fund shall be treated as follows: (1) 20% shall be treated as wages, subject to applicable withholdings, for which an IRS Form W-2 will be issued; and (2) 80% will be treated as non-wages, including penalties and interest, for which the Settlement Administrator will issue an IRS Form 1099.

V. SETTLEMENT FUNDING AND PAYMENTS

- A. Defendant estimates that Settlement Class Members worked approximately 542,000 workweeks during the Class Period. If the final count of workweeks worked by Settlement Class Members during the Class Period, as determined at least seven days prior to the filing of the Motion for Preliminary Approval, exceeds this estimate by more than ten percent (10%), Capstone must elect to either increase the Gross Settlement Amount pro rata for each percentage of increased workweeks over ten percent (10%) or limit the time-period for the releases proportionally, at least 7 days prior to the filing of the Motion for Preliminary Approval. For example, if Settlement Class Members worked 623,300 workweeks during the Class Period, this would represent a 15% increase over the estimate of 542,000, and Capstone would need to

either increase the Gross Settlement Amount by 5% or limit the time-period of the releases.

- B. No later than fifteen (15) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. For clarity, Defendant at its discretion may provide payroll records from which the Administrator may calculate total Workweeks or PAGA Pay Periods in lieu of making that calculation. To protect Settlement Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Defendant and Administrator employees who need access to the Class Data to affect and perform their duties under this Agreement. The Class Data shall be provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and highly confidential and take all necessary precautions to maintain the confidentiality of Class Data. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement and shall not be shared with Class Counsel.
- C. No later than fifteen (15) business days after the Effective Date, Defendant shall fund a Qualified Settlement Fund with the Gross Settlement Amount. Defendant shall separately pay the amounts owed for the employer-side payroll taxes associated with Participating Class Member Payments classified as wages.
- D. Any amounts paid by Defendant, including those for Administration Expenses Payment, but not used by the Administrator to make payments required by this Agreement, including by way of example in the event that Final Approval is not granted (or is reversed on appeal), shall be returned to Defendant.
- E. Within fifteen (15) business days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for Participating Class Member Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Service Awards in accordance with this Agreement.
- F. The Administrator will issue checks for the Participating Class Member Payments and/or Individual PAGA Payments and send them to Settlement Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date," which is one hundred and eighty (180) days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks to all Participating Class Members to the most updated address available to the Administrator. The Administrator may send Participating Class Members a single check combining the Participating Class Member Payment and the Individual PAGA Payment.

- G. The Administrator shall deduct and withhold the employee's share of any applicable payroll taxes from the portion of each Participating Class Member Payment allocated to wages. The Settlement Administrator shall not withhold any taxes from the Individual PAGA Payment.
- H. The Administrator shall be responsible for deducting and withholding the employer's share of required taxes and for remitting all necessary taxes and withholdings to the appropriate governmental agencies. The Administrator shall determine the employer's share of payroll employment taxes on the Participating Class Member Payments and shall communicate such amount to Defendant with a detailed explanation of the calculations. The Administrator shall thereafter remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis. The Administrator will issue the appropriate tax reporting documentation within the same tax year that the Settlement is paid to the Settlement Class Members.
- I. The Administrator must conduct a Class Member Address Search for all other Settlement Class Members whose checks are returned undelivered without a USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Settlement Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Settlement Class Member whose original check was lost or misplaced, requested by the Settlement Class Member prior to the void date.
- J. For any check that is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks, subject to court approval, to Plaintiff's designee Public Citizen Foundation, a 501(c)(3) non-profit, within thirty (30) days after the issuance of the Final Report. If the court does not approve Public Citizen as the cy pres recipient in this matter, or another appropriate non-profit designated by Plaintiffs, then the funds represented by these uncashed and voided checks will go to the California Controller's Unclaimed Property Fund in the name of the Class Members.

VI. RELEASE OF CLAIMS

- A. Class Representatives' Waiver of Rights Under Civil Code Section 1542: As of the date the Gross Settlement Amount is fully funded, Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: any and all claims, known and unknown, asserted and not asserted, which the Plaintiff has or may have against the Released Parties as of such date ("Plaintiffs' Released Claims"). The Plaintiffs' Released Claims include, but are not limited to, all of the Released Class Claims, the Released PAGA Claims, and any other claims arising under the California Labor Code; any claim arising out of the California common law of

contract; the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and federal common law; all claims for lost wages and benefits, emotional distress, retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws; all claims for discrimination, harassment, and wrongful termination, including but not limited to, 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, the California Labor Code, and the law of contract and tort. This release excludes the release of claims not permitted by law. Plaintiffs' Released Claims does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' release of the Released Claims shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them. For purposes of Plaintiffs' Released Claims, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs represent and affirm that they do not have any pending court actions, arbitrations, or other legal proceedings against Defendant other than the Actions.

Class Counsel represent and affirm that they do not have any pending court actions, arbitrations, or other legal proceedings against Defendant other than the Actions.

- B. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all of the Released Class Claims and Released PAGA Claims.
- C. Release of PAGA Claims: All members of the PAGA Representative Group and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all of the Released PAGA Claims.

VII. FILING OF THE CONSOLIDATED COMPLAINT

- A. Consolidated Complaint: Prior to or concurrent with the filing of the motion for preliminary approval of the Settlement, the Parties will stipulate to the filing of a consolidated complaint in the Tuolumne Proceedings. The consolidated complaint will include all Plaintiffs, claims, and allegations raised in the Actions, and in any

PAGA letters or notices submitted by Plaintiffs to the LWDA. Plaintiffs shall present a draft consolidated complaint to Defendant for its review and approval, not to be unreasonably withheld, prior to filing. If the Court does not grant leave to file the consolidated complaint, the Parties will cooperate in an attempt to reach an alternative resolution to effectuate the settlement of this action. Defendant's stipulation to the filing of the consolidated complaint is for the purposes of this Settlement only. If this Settlement is not effectuated for any reason, the Parties further stipulate that the consolidated complaint will be void and the Parties will return their prior positions as if the consolidated complaint had not been filed.

VIII. MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR APPROVAL OF PAGA SETTLEMENT

- A. Motion for Preliminary Approval: Plaintiffs shall prepare and file a motion for preliminary approval of the class action and PAGA settlement that complies with the Court's procedures and instructions and this Agreement. The motion will be filed in Tuolumne County Superior Court. Plaintiffs shall present such proposed motion for preliminary approval to Defendant for its review at least seven days before it is filed, and within thirty (30) days of execution of this Agreement
- B. Responsibilities of Counsel: Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval not later than thirty (30) days after the full execution of this Agreement; obtaining the earliest available hearing date mutually convenient for Class Counsel and Defense Counsel for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- C. Duty to Cooperate: Defendant shall cooperate with Plaintiffs' efforts to obtain preliminary and final approval of the settlement and will provide data required by Plaintiffs for the analysis required by *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008), and the principles established therein. Based on records kept in the ordinary course of business, Defendant estimates that Settlement Class Members employed by Defendant worked approximately 542,000 Workweeks during the Class Period. Based on Section V.A. *supra.*, pursuant to an escalator clause, if the count of workweeks by Settlement Class Members during the Class Period, calculated at least seven days prior to filing of the Motion for Preliminary Approval, exceeds this estimate by more than ten percent (10%), Capstone must elect to either increase the Gross Settlement Amount pro rata for each percentage of increased workweeks over ten percent (10%) or limit the time-period for the releases. Capstone must inform Class Counsel of its election at least seven days prior to the filing of the Motion for Preliminary Approval. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to attempt to reach agreement on modifications to this Agreement to satisfy the Court's concerns.

IX. SETTLEMENT ADMINISTRATION

- A. Selection of the Administrator: The Parties have jointly selected Phoenix to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice to all Settlement Class Members; conducting a National Change of Address search to update Settlement Class Members' addresses before mailing the Class Notice; re-mailing the Class Notices that are returned as undeliverable to the Settlement Class Member's new address; setting up or identifying a toll-free telephone number and email and a fax number to receive communications from Settlement Class Members; receiving and reviewing Requests for Exclusion to determine their validity in terms of their completeness and timeliness; providing the Parties with weekly status reports about the delivery of the Class Notice and receipt of Requests for Exclusion, objections, and disputes; providing copies of Requests for Exclusion and objections to Class Counsel and Defense Counsel; calculating Participating Class Member Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Agreement; calculating, withholding, remitting, and reporting each Participating Class Member's share of applicable payroll taxes (including, without limitation, federal state and local income tax withholding, FICA, Medicare, and any state or local employment taxes); satisfying all federal, state and local income and other tax reporting, return, and filing requirements with respect to the Qualified Settlement Fund; satisfy out of the Qualified Settlement Fund all taxes (including any estimated taxes, interest, or penalties) with respect to employer-side payroll taxes and taxes on the interest or other income earned by the Qualified Settlement Fund; satisfying any fees, expenses, and costs incurred in connection with the opening and administration of the Qualified Settlement Fund and the performance of its duties and function as described in this Settlement Agreement, which such fees, costs, and expenses shall be treated as and included in the costs of administering the Qualified Settlement Fund; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel shall have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- B. Employer Identification Number: The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- C. Qualified Settlement Fund: The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasury Regulation section 468B-1.

D. Notice to Class Members:

1. Using best efforts to perform as soon as possible, and in no event later than thirty (30) days after Defendant provides the Class Data to the Administrator, the Administrator will send to all Settlement Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. Before mailing Class Notices, the Administrator shall update Settlement Class Member addresses using the National Change of Address database.
2. Not later than seven (7) days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to any more current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Settlement Class Members whose Class Notice is returned by the USPS a second time.
3. The deadlines for Settlement Class Members’ written objections and Requests for Exclusion will be extended an additional fourteen (14) days beyond the thirty (30) days otherwise provided in the Class Notice for all Settlement Class Members whose notice is re-mailed. The Administrator will inform the Settlement Class Member of the extended deadline with the re-mailed Class Notice.
4. If the Administrator, the Parties, Defense Counsel, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties, with the Administrator, will review the information to determine whether it is appropriate to include them as Settlement Class Members. If such persons are determined to be Settlement Class Members, they will be entitled to the same rights as other Settlement Class Members, and the Administrator will send, via e-mail or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than fourteen (14) days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

E. Requests For Exclusion (Opt-Outs):

1. Settlement Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, e-mail, or mail, a signed written Request for Exclusion not later than thirty (30) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Settlement Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Settlement Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded by stating “I hereby request exclusion from the Capstone Class Settlement” and includes the Settlement Class Member’s name, address, and email address or telephone

number. To be valid, a Request for Exclusion must be timely faxed, e-mailed, or postmarked by the Response Deadline.

2. The Administrator shall reject a Request for Exclusion as invalid if it fails to contain all the information specified in the Class Notice or if it is not timely submitted or if the Administrator cannot determine that it was timely submitted. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Settlement Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
 3. Every Settlement Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Released Class Claims and Released PAGA Claims, regardless of whether the Participating Class Member actually receives the Class Notice, the Participating Class Member Payment, or objects to the Settlement.
 4. Every Settlement Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive a Participating Class Member Payment and shall not have the right to object to the class portions of the Settlement. Non-Participating Class Members are deemed to release the Released PAGA Claims and are eligible for an Individual PAGA Payment.
 5. If a Settlement Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.
- F. Challenges to Calculation of Workweeks: Each Settlement Class Member shall have thirty (30) days after the Administrator mails the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to challenge the number of Workweeks and PAGA Pay Periods allocated to the Settlement Class Member. The Settlement Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail but must submit any such challenge in writing. The Administrator must encourage the challenging Settlement Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks and Pay Periods contained in the Class Data are correct. The Administrator's determination of each Settlement Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and shall promptly provide to Defense Counsel and to Class Counsel the Administrator's determination as to the challenges.

G. Objections to Settlement:

1. Only Participating Class Members may object to the class portions of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Service Award Payment. No Settlement Class Member may object to their Individual PAGA Payment.
2. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than thirty (30) days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) days for Settlement Class Members whose Class Notice was re-mailed). No Participating Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Participating Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Participating Class Member's intention to appear at the Final Approval Hearing (if such Participating Class Member does intend to appear either personally or through counsel), and/or copies of any written objections or briefs, have been mailed to the Clerk of the Court and the Administrator on or before the Response Deadline. Any objection to the Settlement must be in writing, and must include at least the following: (i) the words "I object to the *Verdugo v. Capstone Logistics LLC* settlement"; (ii) a statement of the objection(s) being asserted and a description of each objection; (iii) if the objector intends to appear at the Final Approval Hearing, the words "I intend to appear at the Final Approval Hearing"; (iv) a list of any witnesses who may be called to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (v) a list of any exhibits, and copies of same, that the objector may offer at the Final Approval Hearing. Written objections must also state the case name, the Participating Class Member's full name and address, and the calendar year(s) during which the Participating Class Member performed work for Defendant. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether an objection to the Settlement has been timely submitted. No later than two (2) days after receiving an objection, the Administrator shall furnish to Class Counsel and Defense Counsel copies of objections received from Participating Class Members. Participating Class Members who fail to submit timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.
3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

- H. The Administrator's Duties: The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
1. Email Address and Toll-Free Number: The Administrator will maintain and monitor an e-mail address and a toll-free telephone number to receive Settlement Class Member calls, faxes, and e-mails.
 2. Qualified Settlement Fund: The Administrator will establish and maintain a Qualified Settlement Fund for this Settlement.
 3. Request for Exclusion (Opt-Outs) and Exclusion List: The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than seven (7) days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the names and other identifying information of Settlement Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Settlement Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
 4. Objections: The Administrator will provide copies of any objections received by the Administrator to Class Counsel and Defense Counsel immediately upon receipt.
 5. Workweek and/or Pay Period Challenges: The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Settlement Class Member challenges over the calculation of Workweeks and/or Pay Periods. In the event of a discrepancy between a Settlement Class Member's claimed Workweeks and/or Pay Periods and the information shown in Defendant's records, Defendant's records shall control. The Administrator's decision shall be final.
 6. Weekly Reports: The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
 7. The Administrator's Declaration: Not later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and

compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notices, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Settlement Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections, and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

8. Final Report by the Administrator: Within ten (10) days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least seven (7) days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least seven (7) days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

X. DEFENDANT'S RIGHT TO WITHDRAW

- A. The Parties agree that if more than five percent (5%) of the total Settlement Class Members exercise their right to opt-out of the Settlement, then Defendant will have the unilateral right to declare the Settlement void in its entirety upon notice to Class Counsel. The Parties agree that, if Defendant withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that no Party will have any further obligation to perform under this Agreement; provided, however, if Defendant voids the Settlement, it will be responsible for all settlement administration costs incurred up to the date of voidance. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven (7) days after Defense Counsel receives the final Exclusion List from the Administrator. Invalid Requests for Exclusion will have no effect on this threshold for an election.
- B. Class Counsel agrees that it will not in any way encourage Class Members to opt-out, request exclusion from, or object to the settlement. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's legal or ethical obligations owed to Class Members.

XI. MOTION FOR FINAL APPROVAL AND RESPONSE TO OBJECTIONS

- A. Motion for Final Approval: Unless otherwise ordered by the Court, not later than sixteen (16) court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for

approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and Final Judgment. Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- B. **Proposed Final Approval Order and Final Judgment:** In the proposed order granting final approval, and at the Final Approval Hearing, the Parties will request that the Court, among other things, enter a Final Approval Order and Final Judgment that:
 1. states that there is a bona fide legal dispute between the Parties as to whether Plaintiffs and Settlement Class Members were properly compensated;
 2. approves the Settlement and adjudicates the terms thereof to be a final, fair, reasonable, adequate, and binding resolution of all claims as set forth in this Agreement by all Plaintiffs and Participating Class Members as to the Released Class Claims, and all Non-Participating Class Members and all members of the PAGA Representative Group as to the Released PAGA Claims;
 3. approves the Agreement as final, fair, reasonable, adequate, and binding, and directs consummation of its terms and provisions;
 4. dismisses the Actions with prejudice and permanently bars and enjoins all Class Members who have not submitted a timely Request for Exclusion and all members of the PAGA Representative Group from filing or prosecuting against Released Parties any individual or class or representative claims released herein; and
 5. retains jurisdiction to enforce the terms of the Settlement.
- C. **Response to Objections:** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- D. **Duty to Cooperate:** If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members or the scope of the PAGA release), the Parties will expeditiously work together in good faith to address the Court's concerns by revising this Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for a Service Award Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administration Expenses Payment shall not constitute a material modification to this Agreement within the meaning of this Paragraph.
- E. **Continuing Jurisdiction of the Court:** The Parties agree that, after entry of final judgment, the Court will retain jurisdiction over the Parties, the Actions, and the

Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-judgment matters as are permitted by law.

- F. Waiver of the Right to Appeal: Provided the judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Fund.

- G. Denial of Final Approval or Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment: In the event that the Court does not grant final approval, or if the Court grants final approval and a reviewing Court vacates, reverses, or modifies the judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Participating Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the Court or the appellate court's concerns and to obtain Final Approval and entry of judgment. An order by the Court awarding Service Award Payments or any payments to Class Counsel less than the amounts contemplated by this Agreement, or an appellate decision to vacate, reverse, or modify the Court's award of any of the Service Awards or any payments to Class Counsel shall not constitute a material modification of the judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

- H. Effect on Effective Date: In the event that the Effective Date does not occur, this Agreement shall be deemed null, void, and unenforceable, and each Party shall retain each of its respective rights as they existed as of the date of the mediation on July 14, 2025, and neither this Agreement, nor any of its accompanying exhibits, nor any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in any subsequent proceedings in the Actions or in any other judicial, arbitral, administrative, investigative, or other court tribunal, forum or proceeding.

XII. ADDITIONAL PROVISIONS

- A. Impact On Verdugo Settlement: The Parties agree that, upon Final Approval, this Settlement shall replace the Verdugo Settlement Agreement. Upon Final Approval of this Settlement of the Actions, the Verdugo Settlement Agreement shall be rescinded and any orders approving the Verdugo Settlement Agreement shall be vacated and/or

amended consistent with the terms of this Settlement. The Parties agree to cooperate to prepare, submit, and support any pleadings necessary to achieve that end.

- B. No Solicitation: The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Settlement Class Member to opt out of or object to the Settlement, or appeal from the judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Settlement Class Members in accordance with Class Counsel's legal or ethical obligations owed to Settlement Class Members. Class Counsel specifically agree that they will not make any public statement regarding the Settlement or post the Settlement on their website(s) or in social media.
- C. Integrated Agreement: Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all prior or contemporaneous agreements, understandings, representations, statements, warranties, covenants, or inducements, whether oral or written and whether by a Party or such Party's legal counsel. No rights under this Agreement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.
- D. Attorney Authorization: Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- E. Prior Assignments: The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- F. Tax Advice: Neither Class Counsel, Defendant, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, *as amended*) or otherwise.
- G. Modification of Agreement: This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their legal representatives.
- H. Agreement Binding on Successors: This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- I. Applicable Law: All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without regard to conflict of law principles.

- J. Cooperation in Drafting: The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- K. Use and Return of Class Data: Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data or other documentation or information provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than ninety (90) days after the date when the Administrator provides a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy, all paper and electronic versions of Class Data or other documentation or information received from Defendant and verify to Defense Counsel that such destruction has been completed.
- L. Headings: The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- M. Calendar Days: Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first court day thereafter.
- N. Notice: All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs and the Class

THE KICK LAW FIRM, APC
Taras Kick
Tyler Dosaj
The Kick Law Firm, APC
815 Moraga Drive
Los Angeles, CA 90049
taras@kicklawfirm.com
tyler@kicklawfirm.com

DIVERSITY LAW GROUP, P.C.
Larry W. Lee
Kristen Agnew
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

lwlee@diversitylaw.com
kagnew@diversitylaw.com

To Defendant:

Gerald L. Maatman, Jr.
Jennifer A. Riley
James S. Brown
DUANE MORRIS LLP
190 South LaSalle Street, Suite 3700
Chicago, Illinois 60603-3433
Telephone: (312) 499-6700
Facsimile: (312) 279-6780
gmaatman@duanemorris.com
jariley@duanemorris.com

- O. Execution in Counterparts: This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.*, DocuSign), or e-mail which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves executed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- P. Stay of Litigation: The Parties agree that upon the execution of this Agreement the litigation of the Actions shall remain stayed and that they will exercise all reasonable efforts to maintain the stays of the Actions, except to effectuate the terms of this Agreement.
- Q. Fair Settlement: The Parties, Class Counsel, and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.
- R. Parties' Authority: The signatories hereto represent that they are fully authorized to enter into this Settlement.
- S. Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.
- T. Representations by Class Representatives:
1. Plaintiffs acknowledge the following:
 - (a) Class Representatives, and each of them, have carefully read and fully understand all of the provisions of this Settlement;

- (b) Class Representatives, and each of them, knowingly and voluntarily agree to all of the terms set forth in this Settlement and have not been coerced, threatened, or intimidated into executing this Settlement;
- (c) Class Representatives, and each of them, were advised, and hereby are advised in writing, to consider the terms of this Settlement and consult with their attorneys before signing this Settlement; and
- (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Plaintiffs, and each of them, acknowledge that all Parties shall bear their own fees and costs through the conclusion of the Actions.

U. Representations by Defendant:

1. Defendant acknowledges the following:

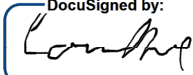
- (a) Defendant has carefully read and fully understands all of the provisions of this Settlement;
- (b) Defendant knowingly and voluntarily agrees to all of the terms set forth in this Settlement;
- (c) Defendant was advised, and hereby is advised in writing, to consider the terms of this Settlement and consult with Defendant's attorneys before signing this Settlement.
- (d) Other than the fees and costs awarded pursuant to the terms of this Settlement, Defendant acknowledges that all Parties shall bear their own fees and costs through the conclusion of the Actions.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date(s) set forth below:

AGREED TO BY PLAINTIFFS AS TO FORM AND CONTENT:

COREY DEVINE

DATED: 10/7/2025

DocuSigned by:

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JERMAINE WILLIS

DATED: 10/13/2025

DocuSigned by:

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SHERI KING

DATED: 10/7/2025

DocuSigned by:

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ANDREA OTANEZ VERDUGO

DATED: _____

IVAN ESCOBAR

DATED: 10/8/2025

DocuSigned by:

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AGREED TO BY DEFENDANT AS TO FORM AND CONTENT:

CAPSTONE LOGISTICS, LLC

DATED: 10/7/2025



By: Mark W. Seymour, Jr.

Title: CFO

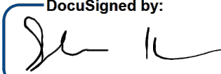
APPROVED AS TO FORM BY COUNSEL:

JERMAINE WILLIS

DATED: _____

SHERI KING

DATED: 10/7/2025

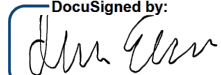
DocuSigned by:

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ANDREA OTANEZ VERDUGO

DATED: _____

IVAN ESCOBAR

DATED: 10/8/2025

DocuSigned by:

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AGREED TO BY DEFENDANT AS TO FORM AND CONTENT:

CAPSTONE LOGISTICS, LLC

DATED: 10/7/2025



By: Mark W. Seymour, Jr.

Title: CFO

APPROVED AS TO FORM BY COUNSEL:

DATED: 10/13/2025

The Kick Law Firm, APC

DocuSigned by:

Taras Kick

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Taras Kick
Tyler Dosaj
Attorneys for Corey Devine and Jermaine Willis
and Co-Lead Class Counsel

DATED: 10/7/2025

Diversity Law Group, A P.C.

DocuSigned by:

Kristen Agnew

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Larry W. Lee
Kristen Agnew
Attorneys for Ivan Escobar and Sheri King and Co-
Lead Class Counsel

Potter Handy LLP

DATED: _____

James Treglio
Attorneys for Andrea Otanez Verdugo

APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:

DUANE MORRIS LLP

DATED: Oct. 7, 2025

Gerald L. Maatman, Jr.

Gerald L. Maatman, Jr.
Jennifer A. Riley
Attorneys for Defendant
Capstone Logistics, LLC

EXHIBIT 2

THE KICK LAW FIRM, APC
Taras Kick (State Bar No. 143379)
(Taras@kicklawfirm.com)
Roy K. Suh (State Bar No. 283988)
(Roy@kicklawfirm.com)
Jeffrey C. Bills (State Bar No. 301629)
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815 Moraga Drive
Los Angeles, California 90049
Telephone: (310) 395-2988
Facsimile: (310) 395-2088

Attorneys for Plaintiff COREY J. DEVINE,
individually, and on behalf of all others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COREY J. DEVINE, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

CAPSTONE LOGISTICS, LLC, a Delaware
Limited Liability Company; and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 20STCV39030

**SECOND AMENDED COMPLAINT
FOR VIOLATION OF THE
CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, et seq.]

DEMAND FOR JURY TRIAL

Action Filed: October 9, 2020
FAC Filed: January 21, 2021

FILED
Superior Court of California
County of Los Angeles

07/13/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Sandoval Deputy

1 **INTRODUCTION**

2 PLAINTIFF COREY J. DEVINE (“PLAINTIFF”) an individual, demanding a jury trial,
3 on behalf of himself and all other aggrieved employees, hereby alleges as follows:

4 **PLAINTIFF**

5 1. PLAINTIFF brings this action on behalf of himself and all other “aggrieved
6 employees” who worked for Defendants CAPSTONE LOGISTICS, LLC, a Delaware Limited
7 Liability Company; and DOES 1 through 100 inclusive (collectively “DEFENDANTS”) to
8 recover, among other things, wages and penalties from unpaid wages earned and due, including
9 but not limited to unpaid minimum wages, unpaid and illegally calculated overtime
10 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged and
11 quitting employees, failure to indemnify employees for necessary expenditures and/or losses
12 incurred in discharging their duties, failure to provide accurate itemized wage statements, failure
13 to maintain required records, and interest, attorneys’ fees, costs, and expenses.

14 2. PLAINTIFF is a male citizen and resident of the State of California. At all times
15 material to this complaint, PLAINTIFF was employed by DEFENDANTS in the State of
16 California as a non-exempt employee.

17 3. PLAINTIFF worked for DEFENDANTS from on or about April 19, 2018 to on or
18 about August 7, 2020, his last day of work.

19 4. PLAINTIFF primarily worked for DEFENDANTS at a location operated by
20 DEFENDANTS’ client, Sysco, but under the supervision and control of DEFENDANTS’ on site
21 managers and supervisors.

22 5. PLAINTIFF worked for DEFENDANTS as a “Lumper” a specific role of
23 Warehouse Clerk, but would often be instructed by DEFENDANTS’ supervisors and managers to
24 log into DEFENDANTS’ system under different job titles, resulting in different hourly rates of
25 pay based on those job duties, without forewarning from the DEFENDANTS as to what his pay
26 would be for those different functions.

27 6. PLAINTIFF regularly worked overtime at DEFENDANTS direction, but
28 DEFENDANTS failed to properly calculate PLAINTIFF’s regular rate of pay, resulting in a

1 systematic underpayment of wages to PLAINTIFF, including overtime wages and break premium
2 payments.

3 7. PLAINTIFF was issued wage statements by DEFENDANTS that failed to state all
4 applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate.

6 8. When DEFENDANTS issued wage statements to PLAINTIFF, DEFENDANTS
7 would separate PLAINTIFF's overtime hours and double time from the premium paid for those
8 corresponding hours and with the overtime and double time premiums not reflecting the rate at
9 which they were paid. Moreover, PLAINTIFF's overtime premium payments were frequently less
10 than one-half the payment received for the corresponding overtime hours, resulting in an
11 underpayment to PLAINTIFF.

12 9. PLAINTIFF was issued his final paychecks on or about August 14, 2020 and
13 September 4, 2020, despite PLAINTIFF's separation from employment on or about August 7,
14 2020.

15 10. DEFENDANTS issued "Retro Pay" to PLAINTIFF weeks after the pay period
16 listed on the corresponding wage statement for that "Retro Pay" with no explanation as to its
17 purpose.

18 11. When PLAINTIFF asked questions about his pay, or pointed out errors in his pay
19 to DEFENDANTS' managers, DEFENDANTS' managers would give PLAINTIFF dismissive
20 responses, including but not limited to "that is all we can do" and "it is what it is" without further
21 assistance or explanation.

22 **DEFENDANTS**

23 12. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
24 CAPSTONE LOGISTICS, LLC and at all times relevant hereto was, a Delaware Limited
25 Liability Company is, organized and existing under the laws of the State of Delaware.
26 PLAINTIFF is further informed and believes, and thereon alleges, that DEFENDANT
27 CAPSTONE LOGISTICS, LLC is authorized to conduct business in the State of California, and
28 does conduct business in the State of California. Specifically, DEFENDANT CAPSTONE

1 LOGISTICS, LLC maintains offices and facilities and conducts business in, and engages in
2 illegal payroll practices or policies in, the County of Los Angeles, State of California.

3 13. The true names and capacities of DOES 1 through 100, inclusive, are unknown to
4 PLAINTIFF at this time, and PLAINTIFF therefore sues such DEFENDANTS under fictitious
5 names. PLAINTIFF is informed and believes, and thereon alleges, that each DEFENDANT
6 designated as a DOE is highly responsible in some manner for the events and happenings referred
7 to herein, and legally caused the injuries and damages alleged in this Complaint. PLAINTIFF
8 will seek leave of the court to amend this Complaint to allege their true names and capacities
9 when ascertained. The DEFENDANTS, and each of them, were alter egos of each other and/or
10 engaged in an integrated enterprise with each other. Additionally, all of the DEFENDANTS were
11 joint employers of PLAINTIFF.

12 14. There exists, and at all times herein mentioned existed, a unity of interest and
13 ownership between the named DEFENDANTS, including DOES, such that any corporate
14 individuality and separateness between the named defendants has ceased, and that the named
15 Defendants are alter egos in that the named DEFENDANTS effectively operate as a single
16 enterprise, or are mere instrumentalities of one another.

17 15. At all material times herein, each DEFENDANT was the agent, servant, co-
18 conspirator and/or employer of each of the remaining defendants, acted within the purpose, scope,
19 and course of said agency, service, conspiracy and/or employment and with the express and/or
20 implied knowledge, permission, and consent of the remaining Defendants, and ratified and
21 approved the acts of the other DEFENDANTS. However, each of these allegations are deemed
22 alternative theories whenever not doing so would result in a contradiction with the other
23 allegations.

24 16. Whenever reference is made in this Complaint to any act, deed, or conduct of
25 Defendants, the allegation means that DEFENDANTS engaged in the act, deed, or conduct by or
26 through one or more of its officers, directors, agents, employees, or representatives who was
27 actively engaged in the management, direction, control, or transaction of DEFENDANTS'
28 ordinary business and affairs.

17. As to the conduct alleged herein, each act was authorized, ratified or directed by DEFENDANTS' officers, directors, or managing agents.

18. At all relevant times herein, PLAINTIFF and other aggrieved employees were employed by DEFENDANTS under employment agreements that were partly written, partly oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all wages earned and due, through methods and schemes which include, but are not limited to, failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to properly compensate PLAINTIFF and other aggrieved employees for necessary expenditures; and requiring, permitting or suffering the employees to work off the clock, in violation of the California Labor Code and the applicable Welfare Commission (“IWC”) Orders.

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

20. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

21. As a direct and proximate result of the unlawful actions of DEFENDANTS, PLAINTIFF has suffered, and continues to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

JURISDICTION AND VENUE

22. The Superior Court of the State of California has jurisdiction in this matter because PLAINTIFF is a resident of the State California, and DEFENDANTS are qualified to do business

1 in California and regularly conduct business in California. Further, no federal question is at issue
2 because the claims are based solely on California law.

3 23. Venue is proper in this judicial district and the County of Los Angeles, California
4 because aggrieved employees performed work for DEFENDANTS in the County of Los Angeles,
5 DEFENDANTS maintain offices and facilities and transact business in the County of Los
6 Angeles, and DEFENDANTS' illegal payroll policies and practices, which are the subject of this
7 action were applied, at least in part, to PLAINTIFF, and other persons similarly situated in the
8 County of Los Angeles.

9 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

10 24. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
11 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
12 former non-exempt aggrieved employees of DEFENDANTS working as "Managers" or in similar
13 non-exempt positions in the State of California at any time within the period beginning one (1)
14 year and sixty five (65) days prior to the filing of this action, and ending at the time this action
15 settles or proceeds to final judgment ("PENALTY PERIOD").

16 25. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice by online filing
17 on August 9, 2019 to the California Labor and Workforce Development Agency ("LWDA") and
18 by certified mail to DEFENDANTS of the specific provisions of the Labor Code and IWC Wage
19 Orders alleged to have been violated, including the facts and theories to support the alleged
20 violations. PLAINTIFF has not received any response from the LWDA. As PLAINTIFF has
21 waited more than sixty-five (65) days from the August 4, 2020 submission and postmark date of
22 PLAINTIFF'S written notice before filing this action, PLAINTIFF has complied with all of the
23 requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

24 **FACTUAL ALLEGATIONS**

25 **Failure to Provide Required Meal Periods**

26 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 9-2001, § 11]**

27 26. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
28 policies and practices to deprive their non-exempt employees all wages earned and due,

1 DEFENDANTS required, permitted or otherwise suffered PLAINTIFF other aggrieved
2 employees to take less than the 30-minute meal period, or to work through them, and have failed
3 to otherwise provide the required meal periods to PLAINTIFF and other employees pursuant to
4 California Labor Code § 226.7, 512 and IWC Order No. 9-2001, § 11.

5 27. DEFENDANTS further violated California Labor Code §§ 226.7 and IWC Wage
6 Order No. 9-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
7 who were not provided with a meal period, in accordance with the applicable wage order, one
8 additional hour of compensation at each employee's regular rate of pay for each workday that a
9 meal period was not provided.

10 28. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
11 1197, and IWC Wage Order No. 9-2001 by failing to compensate PLAINTIFF and other
12 aggrieved employees for all hours worked during their meal periods.

13 29. As a proximate result of the aforementioned violations, PLAINTIFF and other
14 aggrieved employees have been damaged in an amount according to proof at trial, and seek all
15 wages earned and due, interest, penalties, expenses, and costs of suit.

16 **Failure to Provide Required Rest Periods**

17 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001, § 12]**

18 30. At all times relevant herein, as part of DEFENDANTS' illegal payroll policies and
19 practices to deprive their non-exempt employees all wages earned and due, DEFENDANTS
20 failed to provide rest periods to PLAINTIFF and other aggrieved employees as required under
21 California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001, § 12.

22 31. DEFENDANTS further violated California Labor Code § 226.7 and IWC Wage
23 Order No. 9-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were
24 not provided with a rest period, in accordance with the applicable wage order, one additional hour
25 of compensation at each employee's regular rate of pay for each workday that a rest period was
26 not provided.

27 32. As a proximate result of the aforementioned violations, PLAINTIFF and other
28 aggrieved employees have been damaged in an amount according to proof at trial, and seek all

1 wages earned and due, interest, penalties, expenses, and costs of suit.

2 **Failure to Pay Overtime Wages**

3 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001, § 3]**

4 33. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-
5 2001, § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved
6 employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of
7 pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
8 and for the first eight (8) hours on the seventh consecutive workday, with double time for all
9 hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of
10 eight (8) hours on the seventh consecutive day of work in any workweek.

11 34. PLAINTIFF and other aggrieved employees are current and former non-exempt
12 employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage
13 Order No. 9-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate
14 PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the
15 foregoing provisions of the California Labor Code and IWC Wage Order by, among other things:
16 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
17 California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, § 3; requiring, permitting
18 or suffering PLAINTIFF and other aggrieved employees to work off the clock; requiring,
19 permitting or suffering PLAINTIFF and other aggrieved employees to work through meal and
20 rest breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved
21 employees worked; failing to properly maintain PLAINTIFF's and other aggrieved employees'
22 records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period;
23 and other methods to be discovered.

24 35. In violation of California law, DEFENDANTS have knowingly and willfully
25 refused to perform their obligations to compensate PLAINTIFF and other aggrieved employees
26 for all wages earned and all hours worked. As a proximate result, PLAINTIFF and other
27 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
28 and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in

1 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
2 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
3 this Court.

4 36. DEFENDANTS' conduct described herein violates California Labor Code §§ 510,
5 1194, 1198 and IWC Wage Order No. 9-2001, § 3. Therefore, pursuant to California Labor Code
6 §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor
7 Code and IWC Wage Orders, PLAINTIFF and other aggrieved employees are entitled to recover
8 the unpaid balance of wages owed to them by DEFENDANTS, plus interest, penalties, attorneys'
9 fees, expenses, and costs of suit.

10 37. As a proximate result of the aforementioned violations, PLAINTIFF and other
11 aggrieved employees have been damaged in an amount according to proof at trial, and seek all
12 wages earned and due, interest, penalties, expenses, and costs of suit.

13 **Failure to Pay Minimum Wages**

14 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001, § 4]**

15 38. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 9-
16 2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
17 worked in a payroll period is unlawful.

18 39. During the PENALTY PERIOD, DEFENDANTS failed to pay PLAINTIFF and
19 other aggrieved employees minimum wages for all hours worked by, among other things:
20 requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work off the
21 clock; requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work
22 through meal and rest breaks; illegally and inaccurately recording time in which PLAINTIFF and
23 other aggrieved employees worked; failing to properly maintain PLAINTIFF's and other
24 aggrieved employees' records; failing to provide accurate itemized wage statements to
25 PLAINTIFF and other aggrieved employees for each pay period; and other methods to be
26 discovered.

27 40. DEFENDANTS' conduct described herein violates California Labor Code §§
28 1194, 1197, and IWC Wage Order No. 9-2001, § 4. As a proximate result of the aforementioned

1 violations, PLAINTIFF and other aggrieved employees have been damaged in an amount
2 according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558,
3 1194, 1994.2, 1197.1, and other applicable provisions under the Labor Code and IWC Wage
4 Orders, PLAINTIFF and other aggrieved employees are entitled to recover the unpaid balance of
5 wages owed to them by DEFENDANTS, plus interest, penalties, attorneys' fees, expenses, and
6 costs of suit.

7 **Failure to Timely Pay Wages During Employment**

8 **[Cal. Labor Code § 204]**

9 41. Pursuant to California Labor Code § 204, for all labor performed between the 1st
10 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
11 employees between the 16th and 26th day of the month during which the labor was performed.
12 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
13 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
14 between the 1st and 10th day of the following calendar month. In addition, California Labor Code
15 § 204 provides that all wages earned for labor in excess of the normal work period shall be paid
16 no later than the payday of the next regular payroll period.

17 42. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
18 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by
19 the next regular payroll period as required by California Labor Code § 204.

20 **Failure to Pay All Wages Due to Discharged or Quitting Employees**

21 **[Cal. Labor Code §§ 201, 202, 203]**

22 **(Against All DEFENDANTS)**

23 43. Pursuant to California Labor Code § 201, 202, and 203, DEFENDANTS are
24 required to pay all earned and unpaid wages to an employee who is discharged. California Labor
25 Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued
26 and unpaid at the time of discharge are due and payable immediately.

27 44. Furthermore, pursuant to California Labor Code § 202, DEFENDANTS are
28 required to pay all accrued wages due to an employee no later than 72 hours after the employee

1 quits his or her employment, unless the employee provided 72 hours previous notice of his or her
2 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

3 45. California Labor Code § 203 provides that if an employer willfully fails to pay, in
4 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
5 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
6 compensation to the employee at the same rate for up to 30 workdays.

7 46. During the PENALTY PERIOD, DEFENDANTS have willfully failed to pay
8 accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
9 accordance with California Labor Code §§ 201 and 202.

10 47. As a result, PLAINTIFF and other aggrieved employees are entitled to all
11 available statutory penalties, including the waiting time penalties provided in California Labor
12 Code § 203, together with interest thereon, as well as other available remedies.

13 48. As a proximate result of DEFENDANTS' unlawful actions and omissions,
14 PLAINTIFF and other aggrieved employees have been deprived of compensation in an amount
15 according to proof at the time of trial, but in excess of the jurisdiction of this Court, and are
16 entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs, pursuant
17 to California Labor Code §§ 1194 and 2699.

18 **Failure to Provide Accurate Itemized Wage Statements**

19 **[Cal. Labor Code §§ 226; IWC Wage Order No. 9-2001, § 7]**

20 49. During the PENALTY PERIOD, DEFENDANTS routinely failed to provide
21 PLAINTIFF and other aggrieved employees with timely, accurate, and itemized wage statements
22 in writing showing each employee's gross wages earned, total hours worked, all deductions made,
23 net wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
24 other aggrieved employees, and all applicable hourly rates in effect during each pay period and
25 the corresponding number of hours worked at each hourly rate, in violation of California Labor
26 Code § 226 and IWC Wage Order No. 9-2001, § 7.

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1 50. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally
2 failed to provide PLAINTIFF and other aggrieved employees with timely, accurate, and itemized
3 wage statements in accordance with California Labor Code § 226(a).

4 51. During the PENALTY PERIOD, PLAINTIFF and other aggrieved employees
5 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized
6 wage statements as PLAINTIFF and other aggrieved employees could not promptly and easily
7 determine from the wage statement alone one or more of the following: the gross wages earned,
8 the total hours worked, all deductions made, the net wages earned, the name and address of the
9 legal entity or entities employing PLAINTIFF and other aggrieved employees, and/or all
10 applicable hourly rates in effect during each pay period and the corresponding number of hours
11 worked at each hourly rate.

12 52. As a proximate result of DEFENDANTS' unlawful actions and omissions,
13 PLAINTIFF and other aggrieved employees have been damaged in an amount according to proof
14 at trial, and seek all wages earned and due, plus interest thereon. Additionally, PLAINTIFF and
15 other aggrieved employees are entitled to all available statutory penalties, including but not
16 limited to civil penalties pursuant to California Labor Code §§ 226(e), 226.3, and 1174.5, and an
17 award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
18 provided in California Labor Code § 226(e), as well as other available remedies.

19 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**
20 **[Cal. Labor Code § 2802]**

21 53. California Labor Code § 2802(a) requires an employer to indemnify an employee
22 for all necessary expenditures or losses incurred by the employee in direct consequence of the
23 discharge of his or her duties, or of his or her obedience to the directions of the employer.

24 54. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
25 to indemnify PLAINTIFF and other aggrieved employees for all business expenses and/or losses
26 incurred in direct consequence of the discharge of their duties while working under the direction
27 of DEFENDANTS, including but not limited to expenses for uniforms, cell phone usage, and
28 other employment-related expenses, in violation of California Labor Code § 2802.

55. As a proximate result of DEFENDANTS' unlawful actions and omissions, PLAINTIFF and other aggrieved employees have been damaged in an amount according to proof at trial, and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, PLAINTIFF and other aggrieved employees are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT

[Cal. Labor Code §§ 2698- 2699.5]

(Against All DEFENDANTS)

56. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in the foregoing paragraphs.

57. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former employees of DEFENDANTS pursuant to the procedures specified in California Labor Code § 2699.3, because PLAINTIFF and other aggrieved employees were employed by DEFENDANTS and one or more of the alleged violations of the California Labor Code were committed against PLAINTIFF during the PENALTY PERIOD.

58. PLAINTIFF seeks to recover civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class certification is not required.

59. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698–2699.5, PLAINTIFF seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 9-2001, § 20, from DEFENDANTS in a representative action for the violations set forth above, including but not limited to:

a. Failing to properly compensate PLAINTIFF and other current and former

employees for missed meal periods in violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197 and IWC Wage Order No. 9;

b. Failing to properly compensate PLAINTIFF and other current and former employees for missed rest periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9;

c. Failing to properly compensate PLAINTIFF and other current and former employees for all overtime hours worked in violation of California Labor Code §§ 226, 510, 1194, 1197 and IWC Wage Order No. 9;

d. Failing to compensate PLAINTIFF and other current and former employees at a wage rate at least equal to the California minimum wage for each hour worked in violation of California Labor Code §§ 226, 510, 1182.12, 1194, 1197 and IWC Wage Order No. 9;

e. Failing to maintain required records in violation of California Labor Code §§ 1174-1174.5;

f. Failing to provide PLAINTIFF and other current and former employees with accurate itemized wage statements that set forth the wage rate paid for each hour worked, in violation of California Labor Code § 226;

g. Failing to properly compensate PLAINTIFF and other current and former employees for all wages when due in violation of California Labor Code §§ 201, 202, and 204;

h. Failing to indemnify PLAINTIFF and other current and former employees for necessary expenditures incurred in discharge of duties in violation of California Labor Code § 2802; and

60. These penalties are in addition to any other relief available under the Labor Code. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. PLAINTIFF seeks such civil

1 penalties under Labor Code § 2699(f) for DEFENDANTS' violations of Labor Code provisions for
2 which a civil penalty is not specifically provided, including but not limited to Labor Code §§ 201,
3 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

4 61. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
5 August 4, 2020 by online filing to the California Labor and Workforce Development Agency
6 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California
7 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
8 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
9 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

10 62. Therefore, PLAINTIFF has complied with all of the requirements set forth in
11 California Labor Code § 2699.3 to commence a representative action under PAGA.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons
3 similarly situated, by their attorneys, respectfully pray for relief against DEFENDANTS and
4 DOES 1 through 100, inclusive, and each of them, as follows:

5 1. For civil penalties according to proof, including but not limited to the amount of
6 any unpaid wages of PLAINTIFF and other aggrieved employees and all penalties authorized by
7 the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

8 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California
9 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest

10 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
11 any other applicable provisions providing for attorney's fees and costs; and

12 4. For such other and further relief that the Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

15 DATED: July 13, 2021

16 Respectfully submitted,

17 **THE KICK LAW FIRM, APC**

18
19 By: 

20 TARAS KICK
21 ROY K. SUH
22 JEFFREY C. BILS

23 Attorneys for Plaintiff COREY J. DEVINE,
24 individually, and on behalf of all others
25 similarly situated
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27
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EXHIBIT 3

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-23-0000-5535
Corey Devine
-vs-
Capstone Logistics, LLC

INTERIM AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and Claimant Corey Devine being represented by Taras Kick, Nick Rosenthal and Greg Taylor of The Kick Law Firm, APC, and Respondent Capstone Logistics, LLC being represented by Gerald L. Maatman, Jr., Tyler Zmick, Nick Baltaxe, and Jennifer A. Riley of Duane Morris, hereby issue the following INTERIM AWARD:

I. PROCEEDINGS

The evidentiary hearing in this case took place April 9 and 10, 2024. Witness testimony was offered from Claimant Corey Devine, Thomas Peot and Doug Olson. Subsequent to the close of the evidentiary hearing, the parties submitted post-arbitration briefs and reply briefs.

II. SUMMARY OF FINDINGS

As discussed in greater detail below, I find that Respondent Capstone has overcome the *Donohue* rebuttable presumption. I find that Respondent had compliant meal period policies which were provided to Claimant, and that Claimant has failed to prove that he was denied the opportunity to take compliant meal periods.

I also find that Respondent had compliant rest period policies which were provided to Claimant, and that Claimant has failed to prove that he was denied the opportunity to take compliant rest periods.

I find that Claimant has established wage statement violations. I find that Respondent is not entitled to a good faith defense to PAGA civil penalties based upon the violations pursuant to Labor Code § 226(a).

I find that Claimant is the prevailing party and an aggrieved employee. Further, I do not find that the five claims within the PAGA cause of action that Claimant withdrew to be deemed dismissed with prejudice, nor that Respondent is the prevailing party as to these claims.

III. INTRODUCTION

Respondent Capstone Logistics is a third-party warehouse service provider that provides managed labor to up to full warehouse management in its partners' facilities. (Thomas Peot Testimony, "Peot Tr" at 116:9-117:2.)

Claimant Corey Devine worked for Capstone as an hourly, non-exempt Warehouse Associate (freight handler or "lumper") primarily at the Sysco facility in Modesto, California, from approximately April 2018 through August 2020. (Peot Tr., 117:14-18, 118:21-25; Exhibit 10.) Claimant also worked for Capstone for short periods of time at the FreshPoint warehouse in Turlock, and the Frito-Lay warehouse in Modesto. (Exhibit 10; Doug Olson Testimony, "Olson Tr." 280:4-282:5.)

At the time of the hearing, Thomas Peot was the Executive Vice-President of Finance and Human Resources for Capstone. (Peot Tr., 119:16-20.) At all relevant times herein, Doug Olson was a site manager with Capstone, managing both the Sysco location in Modesto, California and the FreshPoint worksite in Turlock, California. (Olson Tr., 241:21-243:12.)

A. Capstone's Policies, Procedures and Training

At all relevant times during Claimant Devine's employment with Respondent Capstone, Capstone maintained written policies governing, among other topics, wage and hour policies and practices.

As part of the onboarding process, Claimant acknowledged receipt of the Employee Handbook and the California Addendum. (Ex. 19; Peot Tr. at 131:2-9.) Specifically, Claimant's acknowledgment stated:

"I, Corey Devine acknowledge that I have received, have access to a printed copy, or have been provided access to an electronic copy of the California Warehouse Associate Handbook that outlines the policies, procedures, benefits and Associates' responsibilities at Capstone Logistics. I acknowledge that I have or will read the provisions contained in this Handbook and will familiarize myself with this information."

(Ex. 19; Peot Tr. at 131:2-9.) After the onboarding process, these documents remained available to Claimant through his ADP log-in and on the Capstone intranet, and Claimant could access them at any time. (Peot Tr. at 132:21-133:3.) The Employee Handbook set forth Capstone's policy to provide all associates uninterrupted 30-minute meal periods no later than the end of the fifth hour of work:

"[I]t is our policy to provide and afford all associates who work more than five (5) hours with an uninterrupted 30-minute meal period free from all duty to begin no later than the end of the fifth hour of work and a second uninterrupted 30-minute meal period free from all duty to commence no later than the end of the 10th hour, should an Associate work that many hours in any given day."

(Peot Tr. at 134:9-19; Exhibit 16, at RESPONDENT0000295.) The Handbook explained that no Capstone manager or supervisor is authorized to instruct an employee to work during a meal or rest period and required an employee immediately to report any such instruction:

“Please note that no Capstone manager or supervisor is authorized to instruct you how to spend your personal time during a meal or rest period. You should immediately report a manager’s or supervisor’s instruction to skip or work during a meal period to Human Resources.”

(Peot Tr. at 135:21-136:2. Exhibit 16, at RESPONDENT0000296.) The Handbook explained Capstone’s policy to pay one hour of premium pay for any instance during which an associate was required to work during a meal period:

“Capstone pays one-hour of premium pay at your regular rate of pay in instances where an Associate is required by Capstone to work during a meal period or not provided an opportunity to take a meal period in accordance with this policy. Because this should be an exceptional occurrence, if you are aware of such a situation, please be sure to bring it to our attention.”

(Peot Tr. at 136:7-12, 136:15-18; Exhibit 16 at RESPONDENT0000296.)

Capstone maintained similar policies regarding rest periods:

“Capstone provides all Associates with the opportunity to take a ten (10) minute paid rest period for every four (4) hours worked (or major fraction thereof), which should be taken so far as practicable in the middle of each work period.

[N]o supervisor is authorized or allowed to instruct or allow you to waive a rest period, and rest periods cannot be used to shorten the workday or be accumulated for any other purpose.”

(Peot Tr. at 137:12-17, 137:21-25; Exhibit 16 at RESPONDENT0000296.)

Capstone distributed an updated version of its Associate Handbook, with substantially the same language, to employees in early 2019. (Peot Tr. at 138:16-139:7) Capstone presented the Handbook to current employees, including Claimant, through the ADP system. (*Id.* at 139:8-17.) Claimant acknowledged receipt of these policies. (*Id.* at 142:5-8.) The California Addendum remained consistent throughout this period. (*Id.* at 144:21-25.)

Capstone offered uncontradicted testimony that it provides training to managers to ensure compliance with the company’s policies and procedures, including a “Capstone University”, and that it also provides training to associates in the form of a computer-based orientation and a training course. (Peot Tr. at 152:11-18, 153:17-154:5.)

IV. **DISCUSSION**

In this arbitration proceeding, Claimant brought one cause of action for Claimant's individual penalties for alleged Labor Code violations pursuant to the Private Attorneys General Act ("PAGA"). See, *Adolph v. Uber Technologies, Inc.*, 14 Cal.5th 1104, 1123 (2023).

Originally, Claimant pursued a PAGA cause of action based upon allegations of eight categories of alleged Labor Code violations. (See, Second Amended Complaint.)

Days before the evidentiary hearing was to commence, Claimant withdrew or "chose not to pursue" his PAGA claims for the following alleged violations: 1) failure to pay all minimum wages; 2) failure to pay all overtime wages; 3) failure to pay timely wages during employment; 4) failure to timely pay final wages; and 5) failure to indemnify Claimant for necessary business expenses.

Thus, at the evidentiary hearing, Claimant pursued three claims for violations under PAGA: 1) failure to provide proper meal periods; 2) failure to provide proper rest periods; and 3) inadequate wage statements. Respondent requests a finding that Respondent is the prevailing party as to these claims, or in other words, that the Claimant's withdrawal of these five claims was with prejudice.

The PAGA Period is from August 4, 2019, to August 7, 2020. (Exhibit 12; Exhibit 1 at RESPONDENT0000022.)

A. Claimant Has Failed to Establish That He Was Prevented From Taking Compliant Meal Periods

1. Applicable Law

California Labor Code § 512 provides that an employer may not employ an employee for more than five hours per day without providing the employee a meal period of not less than 30 minutes. *Cal. Lab. Code § 512(a)*. An employee is also entitled to a second 30-minute meal period if working more than ten hours in a day. If an employer fails to provide a compliant meal or rest period, it must "pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." *Cal. Lab. Code § 226.7*.

An employer satisfies its § 512 obligation to provide meal periods "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from doing so." *Sillah v. Command Int'l Security Services*, 154 F.Supp.3d 891, 915 (N.D. Cal. 2015) (quoting *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).¹

¹ All statutory references herein are to the California Labor Code unless indicated otherwise.

“[T]he employer is not obligated to police meal breaks and ensure no work thereafter is performed.” *Brinker*, 53 Cal.4th at 1017. “Bona fide relief from duty and the relinquishing of control satisfies the employer’s obligations, and work by a relieved employee during a meal break does not thereby place the employer in violation of its obligations and create liability for premium pay under . . . Section 226.7(c).” *Rivera v. Ryder Integrated Logistics, Inc.*, No. CV 22-267, 2022 WL 18337695, at *6 (C.D. Cal. Dec. 27, 2022) (quoting *Cleveland v. Groceryworks.com, LLC*, 200 F.Supp.3d 924, 946 (N.D. Cal. 2016)).

In *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58, 61, 74 (2021), the California Supreme Court held that “time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations.” “Applying the presumption does not mean that time records showing missed, short, or delayed meal periods result in ‘automatic liability’ for employers.” *Donohue*, 11 Cal.5th at 77. “Employers can rebut the presumption by presenting evidence that employees were compensated for noncompliant meal periods or that they had in fact been provided compliant meal periods during which they chose to work.” *Id.*

Donohue reiterated the rules set forth in *Brinker*. *Donohue, supra*, 11 Cal.5th at 78. Those rules include that “[a]n employer is liable only if it does not provide an employee with the opportunity to take a compliant meal period. The employer is not liable if the employee chooses to take a short or delayed meal period or no meal period at all.” *Id.*

“The key question is not necessarily whether an employee took a timely break but *why* the employee did not take a timely break. *Manigo v. Time Warner Cable, Inc.*, No. 16-06722-JFW (PLA), 2017 WL 5054368, at *4 (C.D. Cal. Oct. 17, 2017). Thus, if an employee voluntarily decides to continue working rather than exercising his right to take a meal period, an employer is not liable under Section 226.7.

It is undisputed that Claimant Devine’s time records reflect days where he did not clock out for a meal period, or where his meal period was not timely. (Ex 10.) It is similarly undisputed that Claimant was never paid premium pay for any non-compliant meal periods. (Ex 28, Respondent’s Second Amended Responses to Claimant’s Request for Production of Document No. 38.)

Thus, *Donohue* creates a rebuttable presumption of meal period violations based on Respondent’s time records for Claimant. This means that Claimant prevails on this claim unless Respondent can prove that it provided Claimant with opportunity to take compliant meal periods where he was relieved of all work duties without impeding or discouraging him from taking the compliant meal periods. *See, CACI 2766B.*

2. Evidence at the Hearing

To overcome this presumption, Respondent Capstone argues, among other things, that it has compliant meal period policies, that these policies require Claimant Devine to notify management if he has been prevented from taking a compliant meal period, and that Claimant never complained to anyone at Capstone that he had been unable to take a compliant meal period.

The evidence shows that Capstone maintained general meal and rest period policies that comply with California law. *See Mack v. Fed. Express Corp.*, No. 2:21-CV-01705-SB-JC, 2022 WL 2102889, at *9 (C.D. Cal. Jan. 7, 2022) (“Plaintiff acknowledged receipt of [d]efendant’s meal and rest period policy. The policy states that [d]efendant ‘expects and encourages its employees to take these breaks’ and that employees are ‘expected to take rest breaks in the middle of each work period.’ Thus, it is undisputed that [d]efendant’s policy ‘authorizes and permits’ [p]laintiff to take his rest break.”) (internal citations omitted).

Respondent has offered evidence that Claimant received Capstone’s employee handbook and related documents when he was hired, and an updated version during his employment. (Ex. 19; Ex. 21 at RESPONDENT0000472-473, RESPONDENT0000512.) During the hearing, Claimant contended that he obtained the Handbook through the ADP site after his employment had ended. (Corey Devine Transcript “Devine Tr.” at 107:10-18, 107:23-24.) Claimant testified at the hearing that he never asked anyone for a copy of it. (Devine Tr. 63:23-25.)

Respondent’s evidence that Claimant acknowledged receipt of the employee handbook is persuasive. I find that Claimant was provided with a copy of the employee handbook, or at the very least, was provided with the ability to access a copy of the employee handbook upon hire and the updated version later. Moreover, it is hard to imagine that if Claimant had the ability to easily access the handbook after his employment had ended that he could not have just as easily accessed it at any point during his employment.

Of course, the fact that an employer has compliant policies and that they were provided to an employee does not, in and of itself, prove that the employer actually provided the employee with compliant meal or rest periods.

The time records show that Claimant did not clock in or out for meal periods. While this creates a rebuttable presumption that Claimant was not provided with compliant meal periods, it does not conclusively prove it. The time records conclusively prove only that Claimant did not clock in and out for timely meal periods. They do not prove Claimant was not provided with compliant meal periods. The records leave open the possibility that Claimant took meal periods but did not clock in and out for them. The records also leave open the possibility that Claimant voluntarily chose not to take timely meal periods.

At the Arbitration hearing, Claimant testified that he did not take a compliant meal period “most of the days, most of the time” and “more than half the time”. (Exhibit B, Devine Tr., 16:7-17:2) Claimant testified that he could not take a compliant meal period “on the explicit direction from Manager Olson not to take a break until project is finished”. *Id.* Claimant further testified that he spoke to Mr. Olson about missing meal periods and that Mr. Olson replied that “the work needs to be done.” (Exhibit B, Devine Tr., 18:2-24.)

As discussed above, Mr. Peot testified regarding Respondent Capstone’s employee handbook and written policies regarding meal periods.

Mr. Olson testified that during new-hire orientation, Mr. Olson reviews Capstone’s break policies with new hires and verbally instructs them that it is important that they take their breaks

at the appropriate times. (Olson Tr. at 264:21-25.) He educates employees under his supervision that they are supposed to take their meal periods, and he tries to remind them to take their lunch breaks if they forget. (*Id.* at 249:25-250:7.) Employees do not have to ask Mr. Olson for permission to take a break, and they take breaks at different times depending on their preferences; they have “free rein” to take their breaks. (*Id.* at 265:23-266:21.) Mr. Olson testified that he encourages employees to take their breaks because they are important for health and safety reasons and help associates clear their minds. (*Id.* at 250:11-19.) During shifts that Mr. Olson supervised, employees often took more (and longer) breaks than required because they did not always have work to do. (*Id.* at 269:25-270:10.)

Mr. Olson denied ever telling Claimant not to take a meal or rest break. (*Id.* at 275:17-22.) Mr. Olson explained that he might tell an employee to finish a task that might take 10 or 15 minutes, but only if the employee could do so before his or her break, and he would never ask an employee to finish a task if the employee was due for a break. (*Id.* at 277:4-18.) He testified that employees often took more breaks than required and were able to take longer breaks than required because they often did not have any work to do. (*Id.* at 269:25-270:10.)

Mr. Olson also testified that he often saw Claimant take his meal and rest breaks. (Olson Tr. at 267:9-13.) Mr. Olson testified he often saw Claimant “take off in his truck for meals” and not return for 45 minutes or longer. (*Id.* at 268:6-15.) On other occasions, when he thought Claimant should have returned from lunch, Mr. Olson looked for Claimant and found him sleeping in his truck or on his phone. (*Id.* at 268:16-21.)

As discussed below, Claimant testified that he repeatedly told Mr. Olson that he had been denied the ability to take complaint meal periods. Mr. Olson denies this. (*Id.* at 275:17-22.)

Respondent attacks Claimant’s testimony regarding meal periods as self-serving. One could say that both sides only offered self-serving testimony. Claimant Devine is a party seeking recovery. Mr. Olson is the manager accused of wrongdoing, and Mr. Peot is a vice-president with Capstone. Both Mr. Olson and Mr. Peot would have a motivation to testify favorably for Respondent. Arguably, none of the witnesses who testified are unbiased. No corroborating witness testimony was provided at the hearing.

Mr. Peot testified that the managers show employees their hours each week and they sign off that the hours are accurate. However, Mr. Olson testified that the employees are only showed the total hours for the week, and not the clock in/out records. (Ex B, Olson Tr. 173:3-174:7; 291:4-17.) Showing an employee his total hours only, would make it very difficult, if not impossible, for an employee to determine if his records accurately reflect if he had taken compliant meal periods, so I do not find this to helpful for Respondent.

Claimant has attacked the credibility of Mr. Olson. I am not persuaded by the points raised by Claimant. For example, I do not find anything unusual or negatively impacting Mr. Olson’s credibility by the fact that he cannot recall specifically showing Claimant his hours as this appears to be a rote task he is required to do on a weekly basis for up to 25 associates he supervised. (Olson Tr. at 249:13-15.) Further, Mr. Olson admitted in his testimony that employees are only shown total hours for the week, not clock in/out records – testimony that is

harmful to Respondent's arguments and contradictory to what Mr. Peot testified the managers are supposed to do. This suggests that Mr. Olson testified truthfully.

The fact that Mr. Olson testified that he recalled some occasions where he had seen Claimant sleeping in his car or on his cell phone or returning late for a meal period is credible, as it is also supported by time records reflecting there were some occasions where Claimant was clocked out for meal periods for longer than 30 minutes. Of course, this does not prove that Claimant was always provided with compliant meal periods, or that where his time records suggest a non-compliant meal period that it was by Claimant's choice.

Conversely, Respondent Capstone has raised several arguments attacking Claimant Devine's credibility. Some of these arguments I do not find persuasive. However, some of the issues raised by Respondent do create doubts regarding Claimant's credibility.

First, Claimant testified at his deposition that he texted often with Mr. Olson about his inability to take compliant meal periods, but then at the hearing, Claimant testified that he did not text with Mr. Olson regarding this issue at all.

Specifically, Claimant testified at his deposition that for the majority of his employment with Respondent Capstone, "even while I was on my break", he still received text messages from Mr. Olson in regards to work. (Devine Depo. Tr., at 142:11-16.) Claimant testified that he was interrupted during his meal breaks by Mr. Olson texting him directions to come do other work while Claimant was on his meal break. (Ex. 25, Devine Depo. Tr., at 143:18-144:2.) Claimant testified that Mr. Olson would text him on a regular basis to have him do stuff that required him to leave his break, and that this happened on a regular basis. (*Id.* at 147:18-148:21.)

Claimant also testified at his deposition that he exchanged texts with Mr. Olson multiple times where Claimant told Mr. Olson he was on his meal period and Mr. Olson would respond that the task needed to get done and he could take his break later. (Ex. 25, Devine Depo. Tr. at 158:12-17.) Claimant testified that he complained to Mr. Olson about purported wage-and-hour violations "many, many times, so almost every week," including via text. (Ex. 25, Devine Depo. Tr. at 39:11-18.)

At the hearing, Claimant reversed himself and conceded that among the 313 pages of screenshotted text messages between Claimant and Mr. Olson that Claimant produced in discovery, there is not a single instance of Claimant complaining to Mr. Olson about meal or rest breaks. Instead, Claimant testified that he would never send Mr. Olson texts about this, rather, he would just text Mr. Olson that he needed to speak with him, and that Mr. Olson directed him not to take meal periods in person and occasionally by text. (Devine Tr. at 80:20-81:9, 93:9-94:1, 53:18-54:4.) This is contradictory to Claimant's testimony on this issue in his deposition.

Claimant argues that the text messages were not introduced into evidence by agreement of the parties. Putting aside the reasons for not introducing the text messages, it seems this would not matter given Claimant's admission at the hearing that he has no such texts where he complained about not getting meal or rest breaks or where Mr. Olson interrupted his breaks.

Relying upon Mr. Olson's deposition testimony regarding the existence of such texts, it is difficult to believe that Claimant would have retained 313 pages of text messages between him and Mr. Olson and yet not retain even one text message out of numerous ones definitively establishing his meal and rest period claims. This does seem to suggest that Claimant testified in deposition that there were many such texts, then being confronted with the fact that there were no such texts, he reversed himself at the hearing.

Second, it is difficult to believe that if Claimant were being denied meal and rest breaks throughout his employment and his manager refused to address this issue despite Claimant's repetitive complaints, that Claimant would not have escalated the issue to someone else.

Respondent Capstone's Associate Handbook identifies multiple contact persons, as well as a hotline number (Ex. 16, California Addendum at RESPONDENT0000296 (instructing employees to immediately report a manager's instruction to skip or work during a meal period to Human Resources); Ex. 15, 2016 Associate Handbook at RESPONDENT0000100 (five-step "Open Door Policy" – directing employees to raise problems with their working environments first with their manager, followed by the "next level of management" and ultimately by "discuss[ing] the problem with a Human Resources representative"); Ex. 15 at RESPONDENT0000106 ("No manager or supervisor is authorized to instruct an Associate to work off the clock. Associates should immediately report any manager's or supervisor's instruction to work off the clock to the Speak Up Hotline at 855-607-8699."))

Claimant testified at the hearing that this matter was important to him. (Devine Tr., at 93:23-94:1.) Claimant testified at his deposition that he complained to Mr. Olson about not being able to take meal and rest periods several times a week throughout his nearly two-year tenure with Respondent Capstone. (Ex. 25, Devine Depo. Tr. at 47:3-13, 156:6-12.) At the hearing Claimant could not give a number of how often he complained but he testified he complained multiple times to Mr. Olson about not getting meal periods. (Devine Tr. at 18:2-12.)

Despite Claimant's repeated complaints to Mr. Olson and Mr. Olson's alleged repeated refusal to address this issue, Claimant never once attempted to raise his concerns about meal periods with anyone else at Capstone. Claimant made no effort to contact anyone else in management, human resources, or utilize Capstone's hotline. (Ex. 25, Devine Depo. Tr. 155:24-156:4.)

It is difficult to believe that Claimant was frequently denied meal and rest periods, frequently complained to Mr. Olson about this, over a nearly two-year period, despite considering it to be an important issue, and never once raised a concern with anyone else in management, anyone in Human Resources, corporate, or the company hotline.

Third, Claimant testified at the hearing that the majority of the time he was only able to take a roughly 10-minute lunch break to eat quickly and then get back to work. (Devine Tr. 16:22-17:2.) At his deposition, Claimant testified that he always clocked in and out for lunch periods. (*Id.* at 135:19-136:11; Devine Depo. Tr. 11:15-23, 15:16-20.) If this were correct, then one would expect to see time records reflecting roughly 10-minute meal periods. But the records do not reflect this. This suggests that Claimant's testimony on this issue is either false, or at least

inaccurate. It is possible that this is the result of some confusion in testimony. If this were the only issue raising concerns about Claimant's credibility it would not, by itself, be significant, but in conjunction with the other issues I have identified relating to Claimant's credibility. it cannot be entirely discounted.

Finally, Respondent highlights the text in which Claimant tells Mr. Olson he's a great boss and Claimant's testimony that Mr. Olson was "trustworthy." (Ex. 33; Devine Tr. 95:8-10.) It is maybe a little surprising that Claimant would send such a text to his manager given the issues Claimant complains about relating to meal and rest periods discussed above. However, with no context regarding what prompted the text it is difficult to give it too much weight. This text and the testimony that Mr. Olson is trustworthy has a minimal additional impact on my credibility determination.

Ultimately, based on the foregoing, I find that Respondent Capstone has overcome the *Donohue* rebuttable presumption. I find that Respondent had compliant meal period policies which were provided to Claimant, and that Claimant has failed to prove that he was denied the opportunity to take compliant meal periods.

B. Claimant Has Failed to Establish That He Was Prevented From Taking Compliant Rest Periods

Non-exempt employees who work a shift of over 3.5 hours are entitled to a paid 10-minute rest period. *IWC Wage Order No. 9-2001*, § 12. Further, Labor Code Section 226.7(b) requires that if a rest period is not provided, the employee is owed an extra hour of pay: "If an employer fails to provide an employee a...rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided." To be a valid rest period, the employee must be relieved of all duties and control by the employer. *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 269 (2016).

The *Donohue* rebuttable presumption standard is inapplicable to the rest period context because an employer is not required to record employees' rest periods. *Vega v. Delaware North Companies, Inc.*, No. 19-cv-00484-ADA-SAB, 2023 WL 6940198, at *12 (E.D. Cal. October 20, 2023)(citing *Garcia v. Cent. Coast Restaurants, Inc.*, No 18-CV-02370-RS, 2022 WL 657972, at *7 (N.D. Cal. March 4, 2022)).

A lot of the evidence presented in this case and discussed above relating to meal periods is equally applicable to the rest periods claim.

As set forth above, Respondent Capstone has an employee handbook, including the California Addendum setting forth compliant rest period policies, and directing employees to report it to managers, Human Resources or through a hotline if they have been prevented from taking compliant rest periods. As also discussed above, Respondent has established that Claimant Devine was provided with these policies and the ability to access these policies but never asked anyone for them. (Ex. 19; Peot Tr. at 131:2-9, 132:21-133:3, 135:21-136:2, 137:12-17, 137:21-25, 138:16-139:7, 139:8-17, 142:5-8, 144:21-25; Exhibit 16, at RESPONDENT0000296; Ex. 19;

Ex. 21 at RESPONDENT0000472-473, RESPONDENT0000512; Devine Tr. at 107:10-18, 107:23-24, 63:23-25.)

Claimant testified that he missed 10-minute breaks “most of the time”, because of excessive workloads, super high deadlines and because Mr. Olson was always telling him to just get the work done before he took a break. (Devine Tr. at 19:9-20.3.) Claimant testified at his deposition that he complained to Mr. Olson about not being able to take meal and rest periods several times a week throughout his nearly two-year tenure with Respondent Capstone. (Ex. 25, Devine Depo. Tr. at 47:3-13, 156:6-12.)

Mr. Olson denied interrupting or preventing Claimant from taking rest breaks. (Olson Tr. at 275:17-22, 277:4-18.)

As Claimant concedes in his brief, his rest period claim ultimately comes down to the credibility of the witnesses. I find the evidence relating to credibility discussed above in relation to the meal period claim applies equally to the rest period claim.

Based on the foregoing, I find that Respondent had compliant rest period policies which were provided to Claimant, and that Claimant has failed to prove that he was denied the opportunity to take compliant rest periods.

C. Respondent Failed to Provide Compliant Wage Statements

Labor Code § 226(a) sets forth nine categories of information which must appear on the face of the wage statement, including as relevant here: “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

Claimant Devine argues that Respondent Capstone provided Claimant with wage statements which failed to comply with this aspect of Labor Code § 226(a) in two different ways.

First, Claimant argues that for the pay periods in which he was paid for working on special projects, his wage statements failed to state the number of hours worked or the hourly rate of pay.

Second, Claimant argues that some of his wage statements reflect he was paid for the category identified as “Prod Ot Prem” but that this category did not provide the hourly rate or hours worked.

1. The Line Item “Special Projects” Fails to Comply with Labor Code § 226(a).

A review of the wage statements at issue reflects that of the several wage statements where Claimant was paid under the category of Special Projects, most of them are compliant with Labor Code § 226(a) because they list the hourly rate, hours worked at that rate and the total. (See Respondent Exhibit 3; RESPONDENT0000359 and RESPONDENT0000356.)

In fact, the parties only identified one wage statement where Claimant was paid for the Special Project category without providing an hourly rate nor hours worked. (RESPONDENT0000362, for pay period 5/4/20 through 5/30/20; this same wage statement is duplicated at RESPONDENT0000261.) In my review of the wage statements introduced into evidence, I did not identify any other. This wage statement reflects that Claimant was paid at the rate of \$17 per hour for 31.33 hours in the Special Project category. The wage statement then lists a second line item for Special Projects with total pay of \$31.33, but that does not list hours worked or pay rate.

Respondent argues that this second category is a flat rate bonus and thus not tethered to hours worked or an hourly rate. At the hearing, Mr. Peot testified that this was an incentive bonus for showing up for all the scheduled shifts for the special project, and it was an all or nothing bonus, meaning Claimant only received it if he showed up for all scheduled shifts that week. (Peot Tr. 151:24-152:3.) However, this testimony only goes to eligibility for the bonus, not how the amount of this bonus was calculated.

It seems unlikely that a flat rate bonus for full attendance for special projects would have an amount of \$31.33 unrelated to the amount of hours worked on the special project. It defies logic that this would be a standard amount of a flat bonus and it would coincidentally be the exact amount of the hours Claimant worked on the special project for this particular pay period.

Rather, as to how this incentive bonus was calculated, Mr. Peot testified that it was somehow calculated based on the scheduled hours worked (Peot Tr. 205:5-15, 207:20-23), but that he did not know how it was calculated. (Peot Tr. 207:11-23.) In other words, Claimant is only entitled to this incentive bonus if he works all the scheduled special project shifts, but if he is eligible for this bonus, it is calculated by an hourly rate based on the hours worked. In this pay period, Claimant worked 31.33 hours, and he was paid \$31.33. This seems to be the most reasonable interpretation of the evidence presented. Another way to think of this bonus is a shift differential pay, paid at \$1 per hour worked on the special project.

Since I find that the amount of this bonus was based on the hours worked, and the hourly rate and number of hours for this bonus are available for Respondent to disclose on the wage statements, I find that this one wage statement was not compliant with Labor Code § 226(a) based on the Special Project category.

2. The Line Item “Prod Ot Prem” Fails to Comply with Labor Code § 226(a).

Next, Claimant argues that some of his wage statements reflect he was paid for the category identified as “Prod Ot Prem” but that this category did not provide the hourly rate or hours worked. It is accurate to state that several of the wage statements list a category of “Prod Ot Prem” that do not set forth the hourly rate nor the hours worked at the hourly rate for this category. They state only the wages paid for this category.

Respondent argues that the determination of the hourly rate and hours worked can be determined by simple math, which is adequate to establish compliance with Labor Code § 226.

The Parties have submitted extensive briefing on this issue. Initially, I note that Labor Code § 226(e) was amended effective January 2013.

I find the decision in *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018) and the cases following it to be instructive here. In *Raines*, the parties stipulated that the wage statements did not show the overtime hourly rate of pay, and thus, there was at least a technical violation of section 226. *Raines*, at 673. The wage statements did include both the number of overtime hours worked and the total overtime pay. *Id.* at 671.

The *Raines* court explained that there were two different forms of recovery for violations of section 226 (excluding the third potential for injunctive relief). The court discussed that a PAGA plaintiff can potentially recover civil penalties, and if the wage statement violations create injury as a result of a knowing and intentional violation, the plaintiff could recover the statutory penalties set out in section 226(e). *Id.* at 675.

Raines sought two different forms of recovery for violations of Labor Code § 226, plaintiff brought both individual claims for statutory penalties set forth in Section 226(e) and a PAGA claim for civil penalties based on Section 226(a) (which could include the penalties set forth in Section 226.3).

Raines discussed:

“Section 226(e) permits ‘[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)’ to recover the greater of actual damages or statutory penalties. ‘An employee is deemed to suffer injury’ if the employer fails to provide accurate and complete information of the hourly rate, required by item (9), and ‘the employee cannot promptly and easily determine from the wage statement alone’ the applicable hourly rate. (§ 226(e)(2)(B).) The statute defines “promptly and easily determine” to mean “a reasonable person would be able to readily ascertain the information without reference to other documents or information.” (§ 226(e)(2)(C).)

... For purposes of section 226(e), a plaintiff is ‘injured’ ‘if the accuracy of any of the items enumerated in § 226(a) [including the hourly rate] cannot be ascertained from the four corners of the wage statement.’ (*Ovieda v. Sodexo Operations, LLC* (C.D.Cal., Oct. 3, 2013, No. CV 12-1750-GHK), 2013 WL 12122413 at p. *3.) An actual injury is shown where “there is a need for both additional documentation and additional mathematical calculations in order to determine whether Plaintiffs were correctly paid and what they may be owed.” (*Reinhardt v. Gemini Motor Transport* (E.D.Cal. 2012) 879 F.Supp.2d 1138, 1142.) In contrast, where the deficiency in the wage statement could be corrected by “simple math,” there is no actual injury. (*Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1143, 122 Cal.Rptr.3d 174.)” *Raines*, at 676.

The *Raines* court affirmed the summary judgment in favor of the employer on the plaintiff’s claim for individual statutory penalties under section 226(e) because while there was a

technical violation of section 226(a), plaintiff did not meet the injury requirement for penalties under section 226(e) since the overtime hourly rate could promptly and easily be determined by simple math, dividing the amount she was paid for overtime by the number of overtime hours worked, both which were clearly set forth on the same line for overtime pay. *Raines*, at 676-677.

The *Raines* court next reversed the summary judgment in favor of the employer on the plaintiff's claim for civil penalties under PAGA for violation of section 226(a), holding that "the requirements for a section 226(e) claim do not apply to a PAGA claim for a violation of section 226(a)." *Id.* at 679. The court noted that PAGA was only concerned with civil penalties, while section 226(e) provides for damages for statutory penalties. *Id.* at 679. (citing *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 780 (2017).) Thus, the simple math standard was inapplicable as to the plaintiff's claim for civil penalties for PAGA for violation of section 226(a).

The *Raines* court held that a plaintiff seeking civil penalties under PAGA for violation of section 226(a) does not have to show an injury pursuant to section 226(e). The simple math standard is expressly set forth in section 226(e) as a qualifier to the injury requirement of section 226(e). As a result, the injury requirement and related simple math standard are inapplicable to a PAGA claim for civil penalties under section 226(a). *Raines*, *supra*, at 676, 679-682.

In reaching its holding, the *Raines* court followed the earlier decision in *Lopez*, which held "a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1)." *Lopez*, *supra*, at 788.

Similarly, in *Clayborne v. Lithia Motors, Inc.*, 1:17-cv-00588-AWI-BAM, 2021 WL 38173 (E.D. Cal. Jan. 5, 2021), the employer-defendant argued that the plaintiff's PAGA claim for civil penalties under section 226(a) was without merit because any information missing from the wage statements could be ascertained using simple math. The court rejected this argument, following *Raines* and *Lopez*, finding the simple math standard inapplicable because the injury element of section 226(e) does not apply in PAGA claims. *Clayborne*, at *5. *See also*, *Ward v. United Airlines, Inc.*, C 15-02309 WHA, 2022 WL 3155047 at *3, 7 (N.D. Cal. August 7, 2022) ("To succeed on a PAGA claim for recovery of civil penalties for a violation of Section 226, plaintiffs need only establish a violation of its provisions and need not demonstrate the two additional elements of a claim for statutory penalties under Section 226(e)").

See also, *Oman v. Delta Air Lines, Inc.*, 610 F.Supp.3d 1257, 1278 (N.D. Cal. 2022) ("Although directed at the same underlying conduct, a claim for civil penalties under PAGA based on a violation of section 226(a) is analytically different from a claim for statutory damages under section 226(e). As a matter of law, violations of section 226(a) give rise to PAGA liability, regardless of any good faith defense. [P]roving a violation of subsection (a) of Section 226 is sufficient by itself to warrant civil penalties under PAGA. Unlike a claim for statutory damages, a representative PAGA claim for civil penalties for a violation of section 226(a) does not require proof of injury or a knowing and intentional violation." (Internal quotes and citations omitted.)); *See also*, *Magadia v. Wal-Mart Assocs., Inc.*, 319 F.Supp.3d 1180, 1190, fn. 3 (N.D. Cal. 2018) (doubting the applicability of the simple math standard for purposes of PAGA claims).

I do not find the cases relied upon by Respondent to be applicable because they either preceded the 2013 amendment of Labor Code § 226(e), or they gave no apparent consideration to the amendment.

In *General Atomics v. Superior Court of San Diego County*, 64 Cal.App.5th 987 (2021), the wage statements there provided the hourly rates, hours worked and total wages for each line item of pay. They simply split the overtime pay into one line for the non-premium overtime pay and a separate line for the .5 premium pay. The court rejected the argument by plaintiffs that the wage statement was required to list the 1.5x rate for overtime pay rather than split it into two lines. The court did not consider Labor Code § 226(e), nor the simple math standard of section 226(e). “It is axiomatic that cases are not authority for propositions not considered.” *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal.4th 1109, 1160 (2013).

The decisions in *Morgan v. United Retail Inc.*, 186 Cal.App.4th 1136 (2010) and *Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011), pre-dated the 2013 amendment to section 226(e) as to injury and thus provide little insight into how the section 226(e) injury requirement or simple math standard should be applied in a PAGA case after the amendment.

In *Ontiveros v. Safelite Fulfillment, Inc.*, CV 15–7118–DMG, 2017 WL 6261476, at *7 (C.D. Cal. October 12, 2017), the court found that there was no violation of section 226(a) where an employee could ascertain the required information using simple math. However, this case simply cited to *Morgan*, which was decided before the 2013 amendment to section 226(e), with little discussion, and no analysis at all of the subsequently amended section 226(e). Moreover, in this case the wage statements showed the amount paid and hours worked, providing that an employee could ascertain the missing applicable rate with simple math.

The court in *Hernandez v. BCI Coca-Cola Bottling Co.*, 554 Fed.Appx. 661 (9th Cir. 2014), similarly relied on *Morgan* with no discussion or analysis of the subsequently amended section 226(e).

In *Apodaca v. Costco Wholesale Corp.*, 675 Fed.Appx. 663, 665-666 (9th Cir. 2017), the court relied on *Morgan* and *Price* in evaluating the section 226 claim for statutory penalties, and then treated the PAGA claim for violation of section 226 as a purely derivative claim with no consideration of the amendment to section 226(e). Conversely, in *Lopez v. Friant & Associates*, the plaintiff’s failure to satisfy the requirements for individual relief under section 226(e) did not defeat his PAGA claim for civil penalties as the court noted that a PAGA claim is “not derivative of, or dependent on” an individual claim for relief. *Lopez, supra*, 15 Cal.App.5th at 786.

Even if the simple math standard did apply to a PAGA claim for civil penalties, it is not clear that the wage statements at issue would meet the simple math standard to avoid a finding of a violation under section 226(a). “[P]romptly and easily determine means a reasonable person would be able to readily ascertain the information without reference to other documents or information. *Raines, supra*, at 676.

In most of the cases cited by Respondent applying the simple math standard, two of the relevant items of required information were present on the same line item clearly resulting in situations where it is apparent how to ascertain the missing information.

With the wage statements at issue, the only information on the line for Prod Ot Prem is the wages paid. One cannot ascertain the missing information of hours worked or hourly rate for Prod Ot Prem without knowing that hours worked for Prod Ot Prem are the same as the hours worked in Productive Ot.

It would not necessarily be obvious to a layperson that Prod Ot Prem is the premium pay portion of the pay for overtime hours and hourly rate set forth in the line for Productive Ot, and that the hours worked in Prod Ot Prem are also the hours in Productive Ot.

In some of the wage statements, the Productive Ot and Prod Ot Prem lines are not even next to each other, making it even less apparent that they are related. (RESPONDENT0000246.) On this particular wage statement, when I follow Respondent's methodology and take 10.99 (in Prod Ot Prem pay) and divide it by 1.53 (Productive Ot hours) I get an hourly rate of 7.1830 for the Prod Ot Prem category. This is the overtime premium pay rate for the Productive Ot so this rate should be .5 of the hourly rate for Productive Ot of 14.6875. Yet $14.6875 \times .5 = 7.34375$, not 7.1830. So these numbers do not appear to add up correctly.

In the wage statement at CLAIMANT000004, which Respondent uses as an example, Respondent explains that 32.31 (in Prod Ot Prem pay) / 4.67 (Productive Ot hours) = a premium overtime rate of \$6.91 (or \$6.92 depending on how you round). Except that the overtime premium rate is typically .5 the regular rate (because the overtime rate is typically 1.5 the regular rate). But here the overtime premium rate is not .5 the overtime non-premium rate for Productive Ot. (Productive Ot rate of $13.9000 \times .5 = \$6.95$.) It is actually .5 of the Found Regular Rate listed under Other Benefits and Information, a different section of the wage statement (Found Regular Rate of $13.84 \times .5 = \$6.92$). A layperson, as well as a person with a basic knowledge of how overtime pay is calculated might easily be confused and believe that the Prod Ot hours and pay rate are not tethered to Productive Ot because of this failure to match up.

Thus, while I find that the simple math standard is not available for a PAGA claim for civil penalties for violations of Labor Code § 226(a), I do question whether the simple math standard would apply here even if it was applicable, although I am not making a finding as to whether the wage statements can be determined by simple math.

Therefore, I find that the wage statements with the Prod Ot Prem category do result in PAGA violations under Section 226(a).

3. The "Good Faith Defense" to Wage Statement Claims Set forth in *Naranjo* Does Not Apply in PAGA.

In *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056, 1087 (2024), the California Supreme Court held that "an employer's objectively reasonable, good faith belief that it has provided employees with adequate wage statements precludes an award of penalties under

section 226, subdivision (e)(1). An employer that believes reasonably and in good faith, albeit mistakenly, that it has complied with wage statement requirements does not fail to comply with those requirements knowingly and intentionally.”

In what appears to be a matter of first impression, the question here is does this good faith defense apply to a PAGA claim for civil penalties for violation of section 226?

The *Naranjo* court did not discuss whether the good faith defense to wage statement violations applies in PAGA cases. Indeed, a search of the *Naranjo* case reveals that the court did not mention the word “PAGA” at all.

The *Naranjo* court seems to use the terms “civil penalties” and “statutory penalties” interchangeably. One could argue that this was intended to convey that the applicability of the good faith defense was intended to apply equally to both claims for civil penalties and statutory penalties under § 226.

However, upon closer look, the Court actually narrowly defined the question before it. “The question before us concerns only the circumstances under which a plaintiff is entitled to statutory penalties ..., based on a ‘knowing and intentional failure by an employer to comply with section 226 subdivision (a).’ (§ 226, subd. (e)(1).)” *Naranjo, supra*, at 1071.

Thus, the Supreme Court clearly stated it was only considering the good faith defense with respect to an individual claim for statutory penalties pursuant to Labor Code section 226(e), not civil penalties for violation of Labor Code § 226(a) or § 226.3 based on PAGA. It follows then that the *Naranjo* court’s holding would appear to only be applicable to an individual claim for statutory penalties and not a PAGA claim for civil penalties due to alleged wage statement violations.

Finally, the *Naranjo* Court expressly held that the employer’s objectively reasonable good faith belief that it provided adequate wage statements “precludes an award of penalties under section 226, subdivision (e)(1). An employer that reasonably believes in good faith that it has complied with wage statement requirements does not fail to comply with those requirements knowingly and intentionally.” *Naranjo* at 1087. Thus, the court’s holding appears to be limited to applying a good faith defense to the “knowingly and intentionally” element of section 226(e).

As discussed above, the *Raines* case and other applicable case law provides that Labor Code § 226(e) is not applicable to a PAGA claim for civil penalties for violations of Labor Code § 226. Applying the same reasoning, it follows that a good faith defense applicable to the “knowing and intentional” element of Labor Code § 226(e) would not be applicable to a claim for civil penalties under PAGA for violations of Labor Code § 226.

If the California Supreme Court had wanted to provide guidance on whether the good faith defense applied in PAGA cases, it certainly could have done so, even if only as *dicta*, in a clearer manner than merely loosely using the terms civil and statutory penalties. It is worth reiterating that the court did specify that the question before it concerned only a plaintiff’s

entitlement to statutory penalties under section 226(e). *Naranjo, supra*, at 1071. Therefore, the court did narrowly define its decision thusly.

I have no doubt this issue will eventually make its way to the appellate courts which will hopefully provide clarity on this issue, including as to whether the good faith defense shall be extended to PAGA claims for wage statement violations pursuant to Labor Code § 226. However, given the holdings in *Raines* and the related cases discussed above, and given the *Naranjo* court's narrow description of the issue before it and the narrow holding, I find that Respondent is not entitled to a good faith defense to PAGA civil penalties based upon the violations pursuant to Labor Code § 226(a).

D. Claimant is an Aggrieved Employee and the Prevailing Party in His One Cause of Action for Violation of PAGA

As noted above, in this proceeding, Claimant brought one cause of action for Claimant's individual penalties for alleged Labor Code violations pursuant to PAGA.

Originally, Claimant pursued a PAGA cause of action based upon allegations of eight categories of Labor Code violations. (See Second Amended Complaint.) On April 3, 2024, Respondent raised with the arbitrator concerns regarding Claimant's purported failure to produce and/or retain certain text messages relevant to the claims in this case. On April 4, 2024, just four calendar days and one business day before the arbitration evidentiary hearing was to commence on April 8, 2024,² Claimant withdrew or "chose not to pursue" his PAGA claims for the following alleged violations: 1) failure to pay all minimum wages; 2) failure to pay all overtime wages; 3) failure to pay timely wages during employment; 4) failure to timely pay final wages; and 5) failure to indemnify Claimant for necessary business expenses.

Thus, at the evidentiary hearing, Claimant pursued three claims for violations under PAGA: 1) failure to provide proper meal periods; 2) failure to provide proper rest periods; and 3) inadequate wage statements.

Respondent requests a finding that Respondent is the prevailing party as to these claims, or in other words, that the Claimant's withdrawal of these five claims was with prejudice.

Respondent cites to Code of Civil Procedure § 581 that these five withdrawn claims should be deemed dismissed with prejudice. Code of Civil Procedure §§ 581(d) and (e) both provide that "the court shall dismiss the complaint, or any cause of action asserted in it, in its entirety or as to any defendant, with prejudice" if the plaintiff abandons or dismisses it upon trial or after the commencement of trial. (Emphasis added.)

Here, however, Claimant did not abandon or dismiss the entire complaint or an entire cause of action. Rather, Claimant abandoned or dismissed some of the allegations within his PAGA cause of action. Code of Civil Procedure § 581 does not appear to authorize the court (or

² On April 5, 2024, Respondent's request to continue the commencement of the evidentiary hearing to April 9, 2024, was granted.

in this case the arbitrator) to find that certain claims within a cause of action are deemed dismissed with prejudice when the remaining claims were pursued, and indeed, Claimant has prevailed on one of the claims.

Respondent's reliance on *Rocha v. U-Haul Co. of California*, 88 Cal.App.5th 65 (2023), does not require a different result, because in *Rocha*, there was only one claim of an alleged violation in the claimant's PAGA cause of action in arbitration. The claimants lost their Labor Code § 1102.5 claim on the merits after hearing, and the *Rocha* court held that because "[t]his claim was actually litigated in the arbitration, and was necessary to resolution of the claims in arbitration", issue preclusion applied and the claimants no longer had standing to pursue PAGA in court in the representative action. *Id* at 77-82. The *Rocha* case did not involve a situation where there were multiple claims under the PAGA cause of action, let alone where some were withdrawn prior to arbitration.

Respondent does raise a legitimate concern that Claimant could withdraw the claims of the five individual alleged wage and hour violations under PAGA in this arbitration, but still seek to pursue them in court in the representative action. Claimant has unequivocally stated that he will not pursue grounds for PAGA that he chose not to pursue at the arbitration hearing. (Claimant's July 30, 2024, Supplemental Brief, p.2.)

Pursuant to Code of Civil Procedure § 1032(a), as Claimant has prevailed on his wage statement violation claim, and has obtained a net monetary recovery, Claimant is the prevailing party in this arbitration on his one cause of action for violation of PAGA for purposes of Code of Civil Procedure § 1032(a).

I offer no opinion as to whether issue preclusion applies to the five claims within the PAGA cause of action that Claimant withdrew shortly before the evidentiary hearing in this arbitration. I believe that is a question for the court in the representative action, although it may be a moot question given Claimant's position that it does not intend to pursue these claims.

In my opinion, it would be inequitable to require Respondent to have to re-litigate those 5 claims after Claimant pursued these claims and engaged in discovery, forcing Respondent to devote time and resources to defending these claims, only for Claimant to make a last-minute decision to withdraw these claims.

For the reasons set forth above, I find that Claimant is the prevailing party and an aggrieved employee. Further, I do not find the five claims within the PAGA cause of action that Claimant withdrew to be deemed dismissed with prejudice, nor that Respondent is the prevailing party as to these claims.

V. INTERIM AWARD

Claimant is awarded \$3,500.00 in penalties pursuant to PAGA, based upon 35 pay periods with wage statement violations at \$100 per pay period. (See Ex. 12.)

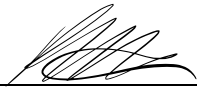
VI. BRIEFING SCHEDULE FOR CLAIMANT'S MOTION FOR ATTORNEY FEES COSTS

As Claimant is the prevailing party, Claimant may bring a motion for attorney's fees and costs pursuant to statute.

The parties are to meet and confer and submit a proposed briefing schedule and hearing date within two weeks of the date this Interim Award is transmitted to the parties.

This Award shall remain in full force and effect until such time as a Final Award is rendered.

Dated: August 19, 2024



Barry M. Appell, Arbitrator

EXHIBIT 4

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-23-0000-5535

Corey Devine

-vs-

Capstone Logistics, LLC

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, and Claimant Corey Devine being represented by Taras Kick, Nick Rosenthal and Greg Taylor of The Kick Law Firm, APC, and Respondent Capstone Logistics, LLC being represented by Gerald L. Maatman, Jr., Tyler Zmick, Nick Baltaxe, and Jennifer A. Riley of Duane Morris, and having previously rendered an Interim Award dated August 19, 2024, hereby AWARD, as follows:

Claimant Corey Devine now brings a motion for attorneys' fees and costs.

I. LEGAL DISCUSSION

When a plaintiff prevails on his or her claim for violation of PAGA, they are entitled to recover reasonable attorneys' fees. *Labor Code 2699(g)(1)* ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs..."). *See also Atempa v. Pedrazzani*, 27 Cal.App.5th 829 (2018) (because Labor Code Section 2699(g)(1) "provides that the prevailing employee 'shall be entitled' to recover attorney fees, '[such] an award is a matter of right.'")¹

Here, Claimant prevailed on his one cause of action for violation of the PAGA, and as a result he is entitled to an award of reasonable attorneys' fees and costs.

A. Lodestar Calculation

The first step in the calculation of the lodestar is determining the number of hours reasonably expended in the litigation. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. An attorney fee award should ordinarily include compensation for *all hours reasonably spent*, so that the purpose behind statutory fee authorizations – *i.e.*, to encourage attorneys to vindicate important rights affecting the public interest – are not frustrated or nullified altogether by diluted awards. *Serrano v. Unruh (Serrano IV)* (1982) 32 Cal.3d 621, 624, 639.

¹ The pre-litigation PAGA notice in this case was sent prior to June 19, 2024, and therefore the prior version of Labor Code § 2699 (old PAGA) is applicable to this case.

Claimant's counsel indicates that they have incurred a total of 331.4 hours litigating this matter. Specifically, Greg Taylor has spent 160.8 hours on this matter. (Declaration of Greg Taylor, ¶2). Nick Rosenthal has spent 157.7 hours on this matter. (Declaration of Nick Rosenthal, ¶2). Tyler Dosaj has spent 12.9 hours on this matter. (Declaration of Tyler Dosaj, ¶2). In addition, Claimant's counsel anticipates spending an additional 15 hours on the reply for the instant motion.

Claimant seeks hourly rates of \$700 per hour for attorney Nick Rosenthal, \$650 for attorney Greg Taylor, and \$650 for attorney Tyler Dosaj, respectively.

Thus, Claimant requests a lodestar amount of \$233,545 in attorneys' fees.

Hourly Rates

I have reviewed the declarations submitted to support these rates. The declarations cite to prior court decisions in which the requested rates were previously approved. Moreover, I find these hourly rates to be reasonable, consistent with my experience.

Reasonable Hours

On one hand, Claimant argues he brought one cause of action under PAGA and he prevailed on that claim, and thus is entitled to all reasonable fees and costs, even if he was unsuccessful on some aspects of the claim. As Claimant argues, all of the hours expended were on the PAGA cause of action.

On the other hand, Respondent argues that if we consider alleged PAGA violations more akin to separate claims, then Claimant only prevailed on one out of eight claims originally brought. Moreover, the one claim Claimant did prevail on had limited relation to the other claims, raising the question of whether the fees and costs incurred in the other claims were reasonable.

There is considerable appeal to both arguments.

The starting point for determining the number of hours spent by counsel on a case is counsel's time records. *Horsford v. Board of Trustees of California State University*, 132 Cal.App.4th 359, 397 (2005). "[V]erified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." *Id.* at 396.

Claimant originally pursued eight distinct theories of wage and hour violations in this case. On April 4, 2024, just four calendar days and one business day before the evidentiary hearing was to commence on April 8, 2024, Claimant abandoned his theories for penalties for the following alleged Labor Code violations: (1) failure to pay all minimum wages; (2) failure to pay all overtime wages; (3) failure to pay timely wages during employment; (4) failure to timely pay final wages; and (5) failure to indemnify Claimant for necessary business expenses.

Thus, at the time of the hearing, Claimant therefore sought penalties for only three alleged Labor Code violations: (1) meal break violations; (2) rest break violations; and (3) wage statement violations. Claimant Devine's wage-statement claim was not merely derivative but was premised on some of his wage statements not containing all information required by California Labor Code §226.

California law considers the extent of a plaintiff's success a crucial factor in determining the amount of a prevailing party's attorneys' fees. *Chavez v. City of Los Angeles*, 47 Cal.4th 970, 989 (2010). Although fees may not be reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims, "fees are not awarded for time spent litigating claims unrelated to the successful claims." *Id.* Moreover, even when successful and unsuccessful claims are related, "under state law as well as federal law, a reduced fee award is appropriate when a claimant achieves only limited success." ... A court may reduce the amount of the fee award 'where a prevailing party plaintiff is actually unsuccessful with regard to certain objectives of its lawsuit.'" *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection*, 190 Cal.App.4th 217, 238 (2010) (citation omitted).

California courts evaluate "whether 'the plaintiff fail[ed] to prevail on claims that were unrelated to the claims on which he [or she] succeeded.'" *Environmental Protection*, 190 Cal. App. 4th at 239. "Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). A reduction in fees is warranted unless the underlying claims at issue are based on the same core set of facts and related legal theories. *Id.* In making this determination, California courts distinguish between unsuccessful "theories" and unsuccessful "claims." *See Sokolow v. Cty. Of San Mateo*, 213 Cal.App.3d 231, 249-50 (1989). Time spent litigating or otherwise disputing specific factual allegations as to a defendant's course of conduct must be excluded to the extent the underlying claim is denied or abandoned. *Id.*

Here, the successful wage statement claim and the unsuccessful meal and rest period claims are premised on entirely different facts and legal theories. Nevertheless, ultimately, all of the hours expended by Claimant's attorneys were spent on the sole PAGA cause of action. As a result, the relation of successful to unsuccessful claims provides limited application to this fee motion other than as part of an overall consideration of the reasonableness of the fees sought.

Fees Sought Disproportionate to the Results

Respondent argues that the fees sought by Claimant are disproportionate to the results. However, assuming Claimant was to win on any claims at arbitration, this was always to be the case. This would have likely have been the case even if Claimant prevailed on all of the alleged wage and hour violations. This is so because Respondent chose to require Claimant to proceed in an arbitration solely on his individual PAGA claim. Respondent cannot require Claimant to arbitrate his individual PAGA claim which necessarily has a modest potential recovery at best, and then fairly complain that the fees incurred by Claimant are disproportionate to the recovery on the claim.

After forcing this matter into an “individual” arbitration, Respondent cannot now point to the award amount as a basis for reducing attorneys’ fees. To allow for a reduction of fees based the amount awarded would act to discourage attorneys from taking PAGA cases at all; if attorneys know that before being able to proceed with their case they will have to spend a year or more arbitrating the case and not receive compensation for that time they will be less inclined to move ahead with PAGA cases.

It is reasonable to expect Claimant to litigate the PAGA claim aggressively so as to try his best to prevail, so he would be found to be an aggrieved employee and thus able to proceed in court on the representative PAGA claims.

The Arbitrator has no doubt that Respondent’s counsel and Claimant’s counsel are well aware of many cases brought under employment law statutes with fee-shifting provisions where the court’s or arbitrator’s award of reasonable attorneys’ fees was multiples, or even many multiples, greater than the amount awarded in damages, and that such awards are common.

Respondent’s Objections to Specific Time Entries in Claimant’s Attorneys’ Billing Records

Respondent helpfully provided a color-coded, highlighted copy of Claimant’s counsel’s timesheets to assist in the analysis of their arguments.

Respondent breaks the objections to specific time entries into 3 categories: (1) entries unrelated to the wage statement claim, (2) administrative work that need not be performed by an attorney, and (3) time entries that are vague or have an unreasonable number of hours spent on the stated tasks.

I cannot readily determine which entries are solely related to claims other than the wage statement claims. Further as discussed elsewhere in this decision, I am not inclined to limit Claimant’s attorneys’ fees recovery to the time spent exclusively on the wage statement claim. I do find that the January 19, 2024, time entry of .8 by Greg Taylor for attending a court appearance to be unrelated to the case in arbitration, and therefore, not recoverable. Otherwise, I am not striking the entries that Respondent has objected to on this basis.

Next, Respondent objects to specific entries as administrative work. Clerical and secretarial work is not compensable as attorneys’ fees. Thus, the calendaring, docketing and clerical work hours are not compensable.” *Campbell v. AMTRAK* (N.D. Cal. 2010) 718 F.Supp.2d 1093, 1105 (citation omitted). *See also, Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1322 (California court approving federal case law disallowing clerical work as attorneys’ fees). “Time spent on ‘filing, document organization and other clerical matters’ should instead be accounted for by a law firm’s overhead and deemed to be included in the attorney’s hourly rate.” *Jones v. Wild Oats Markets, Inc.* (S.D. Cal. 2006) 467 F.Supp.2d 1004, 1016 (citations omitted).

The entries that Respondent objects to as administrative tasks seem more like directing staff to perform administrative tasks. For example, on November 31, 2023, Mr. Taylor’s entry corresponding re calendaring deadlines has a time entry of .1. This sounds like Mr. Taylor

directing that calendaring be done, not performing the administrative calendaring task himself. The .1 of time supports this interpretation. As another example, entries where the attorney is communicating with the court reporter about exhibits is something that staff might do, but it is not a purely administrative or clerical task. Thus, I do not find that any of these entries are for non-recoverable administrative tasks.

Lastly, Respondent objects to certain entries as either vague or unreasonable. I do not find the time entries to be improperly vague. There is enough detail to determine generally the tasks that Claimant's attorneys performed. It is not reasonable to expect the billing records to have broken down tasks by specific claims. Some of the totals for some of the tasks do seem to be a little higher than one might expect. For example, the time entries for drafting the Opening Brief, Post-Hearing Brief and Reply could be a little high. However, I do not find the time entries to be unreasonably high. Therefore, I am not striking any of the specific entries on this ground.

Achievement of Litigation Objectives

When determining the prevailing party for purposes of awarding attorneys' fees, courts "should adopt a pragmatic approach, determining prevailing party status based on which party succeeded on a practical level ... 'by analyzing which party realized its litigation objectives.'" *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App 4th 140, 150 (2006).

Respondent argues that Claimant did not achieve his litigation objectives as he only prevailed on one out of eight theories of wage and hour violations in his PAGA cause of action. Claimant responds that he prevailed on his one cause of action under PAGA and is able to proceed in court in the PAGA representative action and thus achieved his litigation objectives.

As noted above, both arguments have some appeal.

One could also take the additional view that while Claimant's attorneys achieved their litigation objective by prevailing on just one violation under PAGA so they can proceed on the representative PAGA action in court, Claimant, himself, did not achieve his litigation objectives because he only prevailed on one of the eight alleged violations as Claimant's potential to personally recover PAGA penalties was in the arbitration not in the representative action in court.

To highlight this point (or perhaps belabor it), in his Reply brief, Claimant states: "[w]inning more theories would have made no difference to the ultimate outcome of this matter." (Claimant's Reply Brief, 3:4-5.) Winning more theories would have made no difference to Claimant's attorneys who are now able to proceed on the representative action in court, but winning on more theories in arbitration would have made a difference to Claimant himself as it would likely have led to a greater recovery to him.

Attorneys' Fee Award

When evaluating the reasonableness of the fee request, I am troubled by the fact that five of the eight alleged violations were abandoned on nearly the eve of the arbitration hearing. This means that the parties spent significant time and fees in discovery and depositions for 5/8 of the

theories that were dropped at the last minute. I do believe it is reasonable for there to have been some discovery and depositions on these theories before it would necessarily be reasonable for Claimant to make the determination that these theories should be abandoned. I also appreciate that the fees and costs would have been even higher if Claimant had not abandoned these theories and instead pursued them at the arbitration hearing, extending the length of the hearing accordingly.

However, the timing of the dropping of these theories coming in the face of Respondent seeking relief for Claimant's failure to produce text messages implies that the absence of these texts that Claimant testified at deposition existed was a substantial motivating factor in the decision to drop these theories. It is reasonable to assume that Claimant knew or should have known early on that such text messages were not in his possession. This suggests that Claimant should have arguably dropped these theories sooner, before significant fees were incurred on litigating them.

Of the three theories that proceeded at the arbitration, Claimant prevailed on only one. Considering that the wage statement theory on which Claimant prevailed was largely based upon what was and was not on the face of the wage statements, there is a reasonable assumption that most the fees that were incurred were relating to the theories that were either abandoned or on which Claimant did not prevail at hearing.

The bills submitted by Claimant do not provide enough detail to allow me to truly evaluate how much time was spent on the wage statement theory.

If we treated this case, with one PAGA cause of action with various alleged violations akin to a case with separate causes of action, I would be strongly inclined to award no fees for the claimed wage and hour violations which were dismissed or where Claimant did not prevail because they do not appear to be related to the lone wage statement claim on which Claimant did prevail.

However, this is not a case where there are eight separate causes of action. This is a case with one cause of action in which Claimant ultimately prevailed. Nevertheless, in determining what a reasonable fee award should be in the circumstances of this case, I do feel it is warranted to reduce the attorneys' fees award based on the limited success, and in particular, the fact that five of the claims were abandoned just before the start of the evidentiary hearing. *See, Gramajo v. Joe's Pizza on Sunset, Inc.*, 100 Cal.App.5th 1094, 1107 (2024).

I have reduced Greg Taylor's lodestar hours by .8 for the January 19, 2024, time entry as discussed above.

Thus, Claimant's Lodestar is:

Greg Taylor \$650 x 160.0 hrs = \$104,000

Nick Rosenthal \$700 x 157.7 hrs = \$110,390

Tyler Dosaj \$650 x 12.9 hrs = \$ 8,385

Anticipated hours for reply brief: \$650 x 15 hrs = \$9,750

Total Lodestar is \$232,525.00

Claimant is awarded 100% of the fees incurred on the theory on which Claimant prevailed at 1/8 of the total lodestar amount, \$29,065.625 (1/8 x \$232,525).

Claimant is awarded 50% of the fees incurred on the remaining theories which were withdrawn or on which Claimant did not prevail, \$101,729.688 (7/8 x 232,525 x .5).

Claimant is awarded a total of \$130,795.32 in attorneys' fees.

Costs

Claimant seeks recovery of the following costs:

LWDA filing fee:	\$ 75.00
Expert:	\$9,743.65
Travel/hotel:	\$1,071.69
Deposition transcripts:	\$5,766.93
Hearing Transcripts:	\$2,048.75

“An item not specifically allowable under subdivision (a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if ‘reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.’” *Ladas v. California State Auto. Assn.*, 19 Cal.App.4th 761, 774 (1993) (citing C.C.P. § 1033.5(c)(2).)

Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. *Id* at 774.

LWDA Filing Fee

This is a necessary expense to pursuing a PAGA claim, and therefore this cost request is granted.

Expert Fees

It is clear from the expert report that almost all of his time evaluating the claims in this case and calculating the damages, and drafting his report and testifying was attributed to claims that were withdrawn or upon which Claimant did not prevail.

Very little of the expert's report or testimony was devoted to the wage statement claim and damages.

Indeed, the wage statement claim was inherently based on deficiencies on the face of the offending wage statements. Calculating the damages for the wage statement violations only required someone to review the wage statements and identify the ones where Claimant was paid for the Special Project category without providing an hourly rate nor hours worked, and the ones where Claimant was paid for “Prod Ot Prem” but that did not provide the hourly rate or hours worked. This did not require an expert.

Similarly, calculating the penalties for the wage statement violations did not require an expert as it only required someone to count the number of deficient wage statements and multiply this number by the applicable \$100 per violation penalty rate.

Therefore, I am disallowing the expert witness fees.

Travel/Hotel

I am awarding the costs associated with the travel as meeting with Claimant in person to prepare him for testimony and being present during his testimony is far more likely to be effective and thus reasonably necessary to the conduct of the litigation.

However, I am disallowing the meal costs.

“The only meal expenses statutorily allowable are those for jurors while they are kept together during trial and deliberation.” *Ladas, supra*, at 774 (citing C.C.P. § 1033.5(a)(2).) “Nor can meal expenses be justified as ‘necessary to the conduct of the litigation’ since attorneys have to eat, whether they are conducting litigation or not. At best, these expenses are ‘merely convenient or beneficial’ to preparation for litigation, the recovery of which is proscribed under § 1033.5(c).” *Id.* at 774-775.

I calculate a total request of travel/hotel costs of \$1,054.69, not \$1,071.69, including the \$19.54 for which there is no receipt. The meal costs totaling \$74.28 are disallowed. Claimant is awarded the remaining travel/hotel costs totaling \$980.41.

Deposition and Hearing Transcripts

Code of Civil Procedure § 1033.5(a)(3)(A) expressly provides that the costs for taking, video recording, and transcribing necessary depositions are allowable costs.

I believe it was appropriate to conduct depositions and engage in some discovery even if Claimant ultimately chose to withdraw some claimed violations.

I also believe it was reasonable necessary to the litigation for Claimant to pay for the hearing transcripts which was necessary to be able to effectively prepare post-hearing briefs.

Claimant’s request for these costs is granted.

Therefore, Claimant is awarded the following costs:

LWDA filing fee:	\$ 75.00
Travel/hotel:	\$ 980.41
Deposition transcripts:	\$5,766.93
Hearing Transcripts:	\$2,048.75

Claimant is awarded \$8,871.09 in costs.

II. FINAL AWARD

Claimant Corey Devine is the prevailing party on his one cause of action under the Private Attorneys General Act for purposes of Code of Civil Procedure § 1032(a), and Claimant is awarded \$3,500.00 in penalties.

Claimant is awarded \$130,795.32 in attorneys' fees and \$8,871.09 in costs.

The administrative fees and expenses of the American Arbitration Association totaling \$3,200.00 shall be borne as incurred, and the compensation and expenses of the arbitrator totaling \$55,440.00 shall be borne as incurred.

The above sums are to be paid on or before 30 days from the date of this Award.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated: January 3, 2025



Barry M. Appell, Arbitrator

EXHIBIT 14

The Kick Law Firm

A Professional Corporation

815 Moraga Drive
Los Angeles, CA 90049
310 395 2988 / Fax: 310 395 2088

August 4, 2020

Via Online Submission

Labor Workforce Development Agency, Department of Industrial Relations
Attn: PAGA Administrator
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via Certified Mail - Return Receipt Requested

Capstone Logistics, LLC
30 Technology Parkway South, Suite 200
Peachtree Corners GA 30092-2925

Re: Notice Pursuant to California Labor Code § 2699.3

Employee: Corey J. Devine

Employer: Capstone Logistics, LLC

To Whom It May Concern:

This office represents Corey J. Devine (“Employee”), an employee of Capstone Logistics, LLC; its related entities; and agents (together, “Capstone” or “Employer”).¹ Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001, which Employee alleges Employer has violated, including the facts and theories to support the alleged violations.

Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer. Enclosed, please find a draft of Employee’s proposed complaint, which is incorporated by reference into this notice.

Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

This letter also serves as notice to Employer of Employee’s demand for preservation and non-spoliation of evidence pursuant to which Employee requests that Employer take all reasonable steps to promptly save and preserve all relevant documents and data including all electronic files and hard-copy documents that are related to Employee’s employment and potential claims including those of similarly-situated and aggrieved employees, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

Employee serves this notice on behalf of all persons who are, were, or will be non-exempt employees of Employer, or any related or alter-ego company, corporation, partnership, and/or business entity at any time from four years prior to the date of this notice in the State of California. Correspondingly, Employee serves this notice to Employer and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, entities or other persons who are or may be liable under California law for any of the violations alleged herein including at any location where non-exempt employees worked for Employer in the State of California, who may be held liable for the violations of California law as alleged herein during the relevant statutory periods.

¹ *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 811 holds that an individual owner of a business or other person may be held liable for PAGA penalties for violations of Labor Code § 558(a) (overtime wage payment violations) and section 1197.1(a) (minimum wage payment violations). (824; 828-829.) *Atempa* also holds that it was not reversible error for plaintiffs to recover attorney fees and costs and interest from an individual under PAGA. (829-831.)

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which may be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Employee, on behalf of Employee and all other similarly-situated current and former non-exempt employees of Employer in the State of California during the four years preceding the date of this notice, is investigating a potential class and representative action on behalf of Employer’s current and former non-exempt employees in the State of California regarding, among other things, the following violations:

- (1) Failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 9-2001, § 4;
- (2) Failure to pay employees overtime wages in violation of Labor Code §§ 510, 1198 and IWC Wage Order No. 9-2001, § 3;
- (3) Failure to provide meal periods to employees, or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a meal period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 9-2001, § 11;
- (4) Failure to provide rest periods to employees,² or to pay one additional hour of compensation at the employee’s regular rate of compensation for each workday that a rest period was not provided, in violation of Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 9-2001, § 12;
- (5) Failure to indemnify employees for necessary expenditures incurred in discharge of duties in violation of Labor Code § 2802(a), 1198 and IWC Wage Order No. 9-2001, § 9;
- (6) Failure to furnish accurate itemized wage statements to employees in violation of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 9-2001, § 7;
- (7) Failure to timely pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201(a), 202, and 203;
- (8) Engagement in unlawful, unfair or fraudulent business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*; and
- (9) Failures to comply with various Labor Code and IWC Wage Order No. 9-2001 provisions stated above and below warranting the assessment of PAGA civil penalties pursuant to Labor Code §§ 2698, *et seq.* including violations of:
 - i. Labor Code § 201 (failure to timely pay all wages due at time of discharge);
 - ii. Labor Code § 202 (failure to timely pay all wages due at time of quitting or within 72 hours thereof);
 - iii. Labor Code § 203 (failure to pay wages of the employee as continuing penalty up to 30 days after discharge or quitting);
 - iv. Labor Code § 204 (failure to timely pay all wages due during employment);
 - v. Labor Code § 226 (failure to furnish accurate itemized wage statements and maintain accurate records);
 - vi. Labor Code § 226.7 (failure to timely pay all meal period and rest period wages due during employment);
 - vii. Labor Code § 510 (failure to pay all overtime wages due);
 - viii. Labor Code § 512 (failure to provide timely first and second meal periods);
 - ix. Labor Code § 1102.5 (retaliation for disclosing information reasonably believed to be a violation of state or federal law);
 - x. Labor Code § 1174(d) (failure to keep accurate payroll records in a central location in California);
 - xi. Labor Code § 1194 (failure to pay all minimum and overtime wages);
 - xii. Labor Code § 1197 (failure to pay all minimum wages); and

² “[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory.” (*Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.)

xiii. Labor Code § 2802 (failure to indemnify employees).

In short, but as explained in greater detail below, Employer’s unlawful employment practices and policies have deprived its employees of earned wages and other compensation, including civil penalties, and have subjected Employee and/or others similarly situated or aggrieved employees to working conditions prohibited under California law based on the facts and theories described in greater detail below.

(1) Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 9-2001, § 4, California has fixed minimum wage rates, has required employers in California to pay their employees no less than the minimum for all hours worked in the payroll period, has provided that minimum wages for employees fixed by the IWC or by state law, is the minimum wage to be paid to employees, and that payment of a lower wage than the minimum so fixed is unlawful.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1182.12, 1197, 1198 and IWC Wage Order No. 9-2001, § 4. Employer failed to pay Employee and/or other similarly situated and aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Employee and/or other similarly situated and aggrieved to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time, including but not limited to use of an inaccurate auto deduction of daily meal periods; illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees’ records; failing to provide accurate itemized wage statements to Employee and/or other similarly situated and aggrieved employees for each pay period; and other methods to be discovered.

Employer’s conduct violates §§ 1182.12, 1197, 1198 and IWC Wage Order No. 9-2001, § 4 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(2) Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1198 and IWC Wage Order No. 9-2001, § 3, California has required employers to pay their employees at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 1198 and IWC Wage Order No. 9-2001. Employer failed to compensate Employee and/or other similarly situated and aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular rate of pay when required; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work off-the-clock; requiring, suffering or permitting Employee and/or other similarly situated and aggrieved employees to work during their purportedly duty-free meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Employee and/or other similarly situated and aggrieved employees; failing to properly maintain Employee and/or other similarly situated and aggrieved employees’ employment records through falsifying hours worked; failing to provide accurate itemized statements to Employee and/or other similarly situated and aggrieved employees for each pay period; and other methods to be discovered.

Employer’s conduct violates Labor Code §§ 510 and 1194 and Wage Order No. 9-2001, § 3 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order, including but not limited to payment of overtime hours at the aggrieved employees’ flat rate pay and utilization of multiple work codes to avoid paying overtime for work over 8 hours in a day.

(3) Failure to Provide Meal Periods

Pursuant to California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 9-2001, § 11, California has prohibited employers from employing a person for a work period of more than five (5) hours without a meal

period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work, the meal period may be waived by mutual consent of the employer and the employee. California has also prohibited employers from employing a person for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. California has also required that unless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. Moreover, if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the relevant IWC Wage Order, then the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

Employee and/or other similarly situated and aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 9-2001, § 11. Employer failed to provide Employee and/or other similarly situated and aggrieved employees meal periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees’ regular rates of compensation for each workday that a meal period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past five (5) hours from the starts of their shifts before starting a meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts before starting a second meal period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to take on-duty meal periods of less than 30 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to count all times that Employer failed to provide Employee and/or other similarly situated and aggrieved employees duty-free 30-minute meal periods as time worked for the purposes of minimum wage and overtime wage payments; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that the meal period was not provided; and by other methods to be discovered.

Employer’s conduct violates Labor Code §§ 226.7, 512, 1198 and IWC Wage Order No. 9-2001, § 11 because Employer has knowingly and willfully refused to perform their obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order, including but not limited to falsely recording meal breaks as compliant through use of an automatically deducted meal break, which Employee and/or other similarly situated and aggrieved employees are not able to take due to work conditions.

(4) Failure to Authorize and Permit Rest Periods

Pursuant to California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 9-2001, § 12, California has required that employers shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period, that the authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, that a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours, and that authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. California has also required that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of and IWC Wage Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not authorized and permitted.

Employee and/or other similarly situated and aggrieved are current and former non-exempt employees entitled to the protections of California Labor Code §§ 226.7, 1198, and IWC Wage Order No. 9-2001. Employer failed to provide Employee and/or other similarly situated and aggrieved employees rest periods, or to pay one (1) additional hour of compensation at Employee and/or other similarly situated and aggrieved employees’ regular rates of compensation for each workday that a rest period was not provided, as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past three and one-half (3 ½) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted first rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past six (6) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted second rest period; requiring, permitting or suffering Employee and/or other similarly situated and aggrieved employees to work past ten (10) hours from the starts of their shifts without authorizing and permitting them to take a timely and fully uninterrupted third rest period; requiring, permitting or suffering

Employee and/or other similarly situated and aggrieved employees to take rest periods of less than 10 minutes or that were otherwise not duty-free inasmuch as Employer failed to relieve Employee and/or other similarly situated and aggrieved employees of all of their duties or maintained control over them during that time; failing to pay Employee and/or other similarly situated and aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a rest period was not authorized and permitted; and by other methods to be discovered.

Employer’s conduct violates Labor Code §§ 226.7, 1198, and IWC Wage Order No. 9-2001, § 12 because Employer has refused to perform its obligations to compensate Employee and/or other similarly situated and aggrieved employees for all wages earned and all hours worked and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(5) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Pursuant to California Labor Code §§ 2802(a), 1198, and IWC Wage Order No. 9-2001, § 9, California requires has required that employers indemnify employees for all necessary expenditures or losses incurred by an employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Moreover, Labor Code §§ 221, 222.5, and 223 makes it unlawful to deduct or withhold from employees’ wages outside of circumstances specified in Labor Code § 224. Employers, however, required Employee and other aggrieved employees to pay for several required items in violation of Labor Code §§ 221, 222.5, 223 and 224. Specifically, such expenditures/deductions included, but were not limited to the costs of required medical exams to maintain licenses and paying Employee and other aggrieved employees at a lower wage scale for certain work.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 221, 222.5, 223, 224, 2802(a), 1198, and IWC Wage Order No. 9-2001, § 9. Employer knowingly and willfully failed to indemnify Employee and/or other similarly situated and aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer including, but not limited to, by failing to reimburse Employee and/or other similarly situated and aggrieved employees for expenses they incurred in complying with Employer’s locker use requirements, under which Employer required Employee and/or other similarly situated and aggrieved employees to purchase locks to stow away personal belongings and by other methods to be discovered.

Employer’s conduct violates §§ 221, 222.5, 223, 224, 2802(a), 1198, and IWC Wage Order No. 9-2001, § 9 because Employer has knowingly and willfully refused to perform its obligations to indemnify Employee and/or other similarly situated and aggrieved for all monies they expended in necessary expenditures or losses incurred and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(6) Failure to Furnish Accurate Itemized Wage Statements

Pursuant to California Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 9-2001, California has required that employers semimonthly or at the time of each payment of wages furnish each of its employees an accurate itemized wage statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) 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, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. California law has stated that an employee is deemed to suffer injury for purposes of Labor Code § 226(a) if the employer fails to provide accurate and complete information as required by any one or more of items of the foregoing nine (9) enumerated items and the employee cannot promptly and easily determine from the wage statement alone, *inter alia*, the amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to enumerated items (2) to (4), inclusive, (6), and (9).

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 9-2001, § 7. Employer failed to provide Employee and/or other similarly situated and aggrieved employees accurate itemized wage statements as required under the foregoing provisions of the California Labor Code and

IWC Wage Order by, among other things: failing to provide *accurate* writings showing each and every one of the nine (9) enumerated items required by Labor Code § 226(a) including as a result of the unrecorded and uncompensated off-the-clock minimum wage and overtime wage payments earned and due as alleged herein, the uncompensated meal period and rest period premium payments earned and due for each workday a meal period was not provided and each workday a rest break was not authorized and permitted as alleged herein, failing to provide accurate writings enabling Employee and/or other similarly situated and aggrieved employees to promptly and easily determine from the wage statement alone their total hours worked, all deductions, the inclusive dates for which they were paid, and/or all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and by other methods to be discovered.

Employer’s conduct violates §§ 226(a), 226(e)(2)(B), 1198, and IWC Wage Order No. 9-2001, § 7 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved with timely, accurate, and itemized wage statements and because Employer has employed Employee and/or other similarly situated and aggrieved employees under conditions of labor prohibited by an IWC Wage Order.

(7) Failure to Timely Pay All Wages Due to Discharged and Quitting Employees

Pursuant to California Labor Code §§ 201(a), 202, and 203, California has required that employers pay their employees all wages earned and unpaid at the time of discharge, or if an employee quits, not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting, and that if an employer willfully fails to timely pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but those penalty wages shall not continue for more than 30 days.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 201(a), 202, and 203. Employer failed to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at the times they were discharged or at the times they quit under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees in full; failing to pay all earned wages to Employee and/or other similarly situated and aggrieved employees at the time Employer discharged them or within 72 hours of the times they quit; and by failing to pay Employee and/or other similarly situated and aggrieved employees’ wages as penalties from the due dates thereof at the same rate until paid; and by other methods to be discovered.

Employer’s conduct violates §§ 201, 202 and 203 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other similarly situated and aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge or quitting.

(8) Engagement in Unlawful, Unfair or Fraudulent Business Acts or Practices

Pursuant to California Business and Professions Code §§ 17200, *et seq.*, also known as California’s Unfair Competition Law (“UCL”), California has prohibited employers from engaging in unlawful, unfair or fraudulent business acts or practices, which may include an employer’s violations of the California Labor Code sections, which prohibit employers from unlawfully withholding wages from an employee.³ Pursuant to § 17203, any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Furthermore, § 17203 provides that any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of § 17204 and complies with Code of Civil Procedure § 382.

Employee and/or other similarly situated and aggrieved employees are current and former non-exempt employees who, along with members of the general public, are entitled to the protections of California Business and Professions Code §§ 17200, *et seq.* Employer knowingly and willfully engaged in unlawful, unfair or fraudulent business acts or practices including, but not limited to, by (1) willfully failing and refusing to pay Employee and/or

³ *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177-178 (holding: “[w]e conclude that orders for payment of wages unlawfully withheld from an employee are also a restitutionary remedy authorized by section 17203. The employer has acquired the money to be paid by means of an unlawful practice that constitutes unfair competition as defined by section 17200. The employee is, quite obviously, a ‘person in interest’ (§ 17203) to whom that money may be restored.”)

other similarly situated and aggrieved employees minimum wages earned and due, (2) willfully failing and refusing to pay Employee and/or other similarly situated and aggrieved employees overtime wages earned and due, (3) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees meal periods or pay premium wages in lieu thereof, (4) willfully failing and refusing to provide Employee and/or other similarly situated and aggrieved employees rest periods or pay premium wages in lieu thereof, (5) willfully failing and refusing to indemnify Employee and/or other similarly situated and aggrieved employees for necessary business expenses, (6) willfully failing and refusing to furnish Employee and/or other similarly situated and aggrieved employees with accurate itemized wage statements, and (7) willfully failing and refusing to timely pay Employee and/or other similarly situated and aggrieved employees all wages due at time of discharge or quitting. Furthermore, Employer has failed to record, report, and pay the correct sums of assessment to the state authorities under the California Labor Code and other applicable regulations. As a result of Employer’s unfair and unlawful business practices, Employer has reaped unfair and illegal profits at the expense of Employee and/or other similarly situated and aggrieved employees and members of the general public.

Employer’s conduct violates California Business and Professions Code §§ 17200, *et seq.* because Employer has knowingly and willfully engaged in the foregoing Labor Code violations repeatedly, over a significant period of time, and in a systematic manner, to the detriment of Employee and/or other similarly situated and aggrieved employees and members of the general public.

(9) Failures to Comply with Labor Code and IWC Wage Order No. 9-2001 Provisions Warranting PAGA Civil Penalties

Pursuant to California Labor Code §§ 2698 *et. seq.*, also known as PAGA, California has stated that notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in §§ 2699⁴ and 2699.3.⁵

Employee on behalf of Employee and/or other aggrieved employees incorporates the preceding paragraphs into Employee’s allegations that follow, which give rise to Employer’s liability for PAGA civil penalties.⁶

i. Underlying Violations of Labor Code § 201 (Failure to Timely Pay All Wages Due at Time of Discharge)

Labor Code § 201(a) provides, in part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

⁴ Pursuant to Labor Code § 2699 subdivision (a), California has stated: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

⁵ Pursuant to Labor Code § 2699.5, California has stated: “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.4, 6310, 6311, and 6399.7.”

⁶ An employee affected by at least one labor code violation may pursue penalties on behalf of the state for unrelated violations by the same employer. (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745.)

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 201(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they were discharged.

Employer’s conduct violates Labor Code § 201(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of discharge, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

ii. Underlying Violations of Labor Code § 202 (Failure to Timely Pay All Wages Due at Time of Quitting or Within 72 Hours Thereof)

Labor Code § 202(a) provides, in part: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 202(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due at the times they quit.

Employer’s conduct violates Labor Code § 202(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned and unpaid at the time of quitting, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

iii. Underlying Violations of Labor Code § 203 (Failure to Pay Wages of the Employee as Continuing Penalty Up to 30 Days After Discharge or Quitting)

Labor Code § 203(a) provides, in part: “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 203(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed perform its obligations to timely pay Employee and/or other aggrieved employees all final wages and the corresponding penalties that are still due as a result owed at their same respective rates of pay, for up to 30 days.

Employer’s conduct violates Labor Code § 203(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all continuing wages as penalties, sometimes called “waiting time penalty” wages, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

iv. Underlying Violations of Labor Code § 204 (Failure to Timely Pay All Wages Due During Employment)

Labor Code § 204(a) provides, in part: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”⁷

⁷ Labor Code § 210 provides: “(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: [¶] (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. [¶] (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 204(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to timely pay Employee and/or other aggrieved employees all wages due throughout their respective periods of employment including on days that Employer designated in advance as the regular paydays.

Employer’s conduct violates Labor Code § 204(a) because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with timely and full payment of all wages earned throughout their respective periods of employment, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

v. Underlying Violations of Labor Code § 226 (Failure to Furnish Accurate Itemized Wage Statements and to Maintain and Timely Provide Accurate Employment Records)

In addition to requiring employers to provide employees with accurate itemized wage statements, discussed above, Labor Code § 226(a) provides, in part: “The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”⁸

Labor Code § 226(b) provides: “An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee.”

Labor Code § 226(c) provides: “An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction. Impossibility of performance, not caused by or a result of a violation of law, shall be an affirmative defense for an employer in any action alleging a violation of this subdivision. An employer may designate the person to whom a request under this subdivision will be made.”⁹

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees accurate itemized wage statements and failed to create and maintain accurate records, as required under Labor Code § 226(a). Employee is further informed and believes that Employer failed to provide Employee and/or other aggrieved employees copies of their employment records upon their oral and written requests as soon as practicable, but no later than 21 calendar days from the date of the request, as required under Labor Code § 226(b) and (c).

plus 25 percent of the amount unlawfully withheld. [¶] (b) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.”

⁸ Labor Code § 226.3 provides: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.”

⁹ Labor Code § 226(f) provides: “A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.”

Employer’s conduct violates Labor Code § 226 because Employer has knowingly and willfully refused to perform its obligations to provide Employee and/or other aggrieved employees with accurate itemized wage statements, to maintain accurate employment records, and to timely and fully comply with written or oral requests for inspection or receipts of copies of employment records, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

vi. Underlying Violations of Labor Code § 226.7 (Failure to Timely Pay All Meal Period and Rest Period Wages Due During Employment)

Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 226.7(c). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees one (1) hour of pay at their regular rates of compensation for each workday that a meal period was not provided and for each workday that a rest period was not authorized or permitted.

Employer’s conduct violates Labor Code § 226.7(c) because Employer has knowingly and willfully refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitle the State of California, Employee and other aggrieved employees to PAGA civil penalties.

vii. Underlying Violations of Labor Code § 510 (Failure to Pay All Overtime Wages Due)

Labor Code § 510(a) provides, in part: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 510(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all overtime hours worked.

Employer’s conduct violates Labor Code § 510 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

viii. Underlying Violations of Labor Code § 512 (Failure to Provide Timely First and Second Meal Periods)

Labor Code § 512(a) provides: “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 512(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal periods during their shifts.

Employer’s conduct violates Labor Code § 512 because Employer has refused to perform its obligations to provide Employee and/or other aggrieved employees timely, uninterrupted, and duty-free first and second meal

periods during their shifts, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

ix. Underlying Violations of Labor Code § 1102.5 (Retaliation for Disclosing Information Reasonably Believed to be a Violation of State or Federal Law)

Labor Code § 1102.5(a) provides: “An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

Labor Code § 1102.5(b) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

Labor Code § 1102.5(c) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.”

Labor Code § 1102.5(d) provides: “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1102.5. Employee is informed and believes that Employer adopted and/or enforced rules, regulations or policies designed to prevent or retaliate against Employee and/or other aggrieved employees from disclosing violations of, or participating in investigations, hearings, or inquiries concerning, Employer’s violation of California wage and hour laws as alleged herein or other workplace conditions and/or occurrences including industrial injuries suffered by Employee and/or other aggrieved employees.

Employer’s conduct violates Labor Code § 1102.5 because Employer has refused to perform its obligations to refrain from adopting or enforcing rules designed to prevent disclosure of California wage and hour violations and/or retaliating against employees to made such disclosures, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

x. Underlying Violations of Labor Code § 1174(d) (Failure to Keep Accurate Payroll Records in a Central Location in California)

Labor Code § 1174 and subdivision (d) provide: “Every person employing labor in this state shall: [¶] . . . (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1174(d). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to keep Employee and/or other aggrieved employees’ accurate payroll records including the hours they worked daily.

Employer’s conduct violates Labor Code § 1174(d) because Employer has refused to perform its obligations to keep accurate payroll records, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

xi. Underlying Violations of Labor Code § 1194 (Failure to Pay All Minimum and Overtime Wages)

Labor Code § 1194(a) provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1194(a). As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all hours worked, including hours entitling them to minimum wages and overtime wages.

Employer’s conduct violates Labor Code § 1194(a) because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, including hours entitling them to minimum wages and overtime wages, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

xii. Underlying Violations of Labor Code § 1197 (Failure to Pay All Minimum Wages)

Labor Code § 1197 provides: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 1197. As stated above, and for the reasons set forth above, Employee is informed and believes that Employer failed to pay Employee and/or other aggrieved employees for all hours worked, including hours entitling them to minimum wages.

Employer’s conduct violates Labor Code § 1197 because Employer has refused to perform its obligations to compensate Employee and/or other aggrieved employees for all wages earned and all hours worked, including hours entitling them to minimum wages, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.¹⁰

xiii. Underlying Violations of Labor Code § 2802 (Failure to Indemnify Employees)

Labor Code § 2802(a) provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Employee and/or other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code § 2802. As stated above, and for the reasons set forth above, Employee is informed and believes that knowingly and willfully failed to indemnify Employee and/or aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties.

¹⁰ Labor Code § 1197.1(a) and subparagraphs (1) to (3) provide: “(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: [¶] (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203. [¶] (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

The Kick Law Firm, APC

LWDA, DIR; Capstone Logistics, LLC et al ("Employer")

August 4, 2020

Page 13 of 13

Employer's conduct violates Labor Code § 2802 because Employer has refused to perform its obligations to indemnify Employee and/or other aggrieved for all monies they expended in necessary expenditures or losses incurred, which entitles the State of California, Employee and other aggrieved employees to PAGA civil penalties.

* * *

This notice shall further represent Employee's reasonable attempt to settle Employee's dispute with Employer prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, this notice serves to apprise Employer of Employee's aforementioned grievances and the proposed remedies as detailed below, while affording Employer reasonable opportunity to meet Employee's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employer shall pay Employee and all other similarly-situated persons employed by Employer at any time during the past 48 months back pay and compensation for the above-referenced violations.
2. Employer shall comply with all California labor laws and ensure that its/their non-exempt employees are paid proper overtime compensation and given required meal and rest periods.
3. Employer shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of minimum wage hours that were not paid, the number of overtime wage hours that were not paid, the number of meal periods which were not provided, the number of rest periods which were not authorized and permitted, and the number of employees who were required to pay uniform, uniform maintenance or other expenditures in the discharge of their duties, the number of employees who were not paid all wages due at time of discharge or quitting, with the investigation to be completed within 60 days.
4. Employer shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employer also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7.
5. Employer shall reimburse those employees who were forced to pay for any business expenses incurred for Employer's benefit, as well as those items employees were compelled and coerced to purchase from Employer or other persons in relation to their employment.
6. Employer shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.
7. Employer shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.
8. Employer shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.* including, but not limited to, penalties under Labor Code §§ 206.5, 210, 226.3, 558, 1174.5, 1197.1, and 2699 and Wage Order No. 9-2001, § 20.

If the Department of Industrial Relations including the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to The Kick Law Firm, APC, 815 Moraga Drive, Los Angeles, California 90049. Additionally, please advise us if the Agency or Employer require additional information regarding Employee's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,
THE KICK LAW FIRM, APC



DANIEL J. BASS (daniel@kicklawfirm.com)
Attorneys for Corey J. Devine

EXHIBIT 15

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Daniel Bass](#)
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, August 4, 2020 3:01:23 PM

8/4/2020

LWDA Case No. LWDA-CM-801354-20
Law Firm : The Kick Law Firm, APC
Plaintiff Name : Corey J. Devine
Employer: Capstone Logistics, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 17

Verdugo v. Capstone Logistics LLC
Superior Court of California, County of Tuolumne
(Case No. CV66120)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER EMPLOYEE WHO WORKED FOR CAPSTONE LOGISTICS, LLC WITHIN THE STATE OF CALIFORNIA IN A NON-EXEMPT POSITION AT ANY TIME FROM AUGUST 1, 2019, THROUGH AND INCLUDING JULY 25, 2025, YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The Superior Court of California, County of Tuolumne (“Court”) authorized this Notice to be sent by Phoenix Settlement Administrators (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

DEFENDANT CANNOT AND WILL NOT RETALIATE AGAINST YOU IN ANY WAY FOR PARTICIPATING IN THIS SETTLEMENT.

ATTN: «First_Name» «Last_Name»
«Address_1»
«City», «State», «ZIP_Code»

**YOU ARE ESTIMATED TO RECEIVE
APPROXIMATELY «Est_Set_Amt»
THROUGH THIS CLASS ACTION
SETTLEMENT**

- Corey J. Devine, Jermaine Willis, Ivan Escobar, Sheri King, and Andrea Otanez Verdugo (collectively, the “Named Plaintiffs”) sued Capstone Logistics, LLC (“Capstone” or “Defendant”) on behalf of themselves and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims made in the lawsuit. The estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
You Can ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: June 15, 2026)	If you ask to be excluded from the settlement, you will get no payment from the class settlement, but you will keep any rights to sue Defendant separately for the same legal claims made in this lawsuit. Important: You cannot ask to be excluded <u>and</u> still get a class settlement payment. However, you will still receive a portion of the California Private Attorneys General Act (“PAGA”) Settlement Payment (see Questions 6 and 7 below) even if you exclude yourself.
You Can OBJECT TO THE SETTLEMENT (Deadline: June 15, 2026)	If you do not like the settlement terms, you can send a written objection to the Settlement Administrator by the deadline. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. Important: If you object to the settlement, you cannot also or later ask to be excluded.

THESE RIGHTS AND OPTIONS — AND THE DEADLINES TO EXERCISE THEM — ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What Is This Lawsuit About?

In the lawsuit, the Named Plaintiffs allege putative class claims under the Labor Code for: (1) failure to provide meal breaks; (2) failure to authorize and permit rest breaks; (3) failure to pay for all hours worked; (4) failure to pay overtime wages; (5) provision of inaccurate wage statements; (6) failure to timely pay wages; (7) failure to timely pay wages at separation of employment; (8) unlawful deductions

from wages; (9) failure to maintain payroll records; and (10) failure to reimburse business expenses. Defendant denies the allegations in the lawsuit and denies that it has engaged in any wrongdoing. Defendant asserts that it complied with all legal requirements, but is resolving this action in order to avoid the costs of further legal proceedings.

3. Why Is This A Class Action?

This lawsuit is a class action. In a class action, one or more persons, called class representatives (in this case, the Named Plaintiffs), sue on behalf of people who allegedly have similar claims. All these people are a class and may be referred to as class members. A class action lawsuit resolves the issues for all class members, except for those who exclude themselves from the class. This lawsuit is known as *Verdugo, et al. v. Capstone Logistics, LLC*, Case No. CV66120, and it is proceeding in the Superior Court of California, County of Tuolumne.

4. Why Is There A Settlement?

The Court did not decide in favor of Named Plaintiffs or Defendant. Named Plaintiffs thinks that they could have won at trial. Defendant thinks that it would have won at trial. Instead of a trial, however, both parties agreed to a settlement. That way, they avoid the cost of litigation, and the individuals potentially affected will get compensation. The Named Plaintiffs and their attorneys think the settlement is best for Settlement Class Members.

5. How Do I Know If I Am Part Of The Settlement?

The Court has decided that all current or former employees who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through and including July 25, 2025, are “Class Member(s).”

The Court has also decided that the PAGA Representative Group means all current or former employees who worked for Capstone within the State of California in a non-exempt position at any time from August 1, 2019, through and including July 25, 2025.

The Class Period is the period from August 1, 2019, through and including July 25, 2025.

6. What Does The Settlement Provide?

The proposed settlement provides for a payment by Capstone of \$5,950,000 to fully and finally resolve all claims in the lawsuit (referred to as the “Gross Settlement Amount”). The Net Settlement Fund will be distributed to Settlement Class Members who can be located, and who do not exclude themselves from the settlement. The Net Settlement Fund will be the amount of money remaining from the Gross Settlement Amount after deducting the following: (i) settlement administration costs in the amount of \$65,950.00; (ii) Service Awards for each of the Named Plaintiffs in amounts ranging from \$10,000 to \$25,000 (collectively, \$65,000) for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable); (iii) Class Counsel’s attorneys’ fees in the amount of one-third of the Gross Settlement Amount (currently estimated to total \$1,983,333.33); (d) Class Counsel’s actual litigation costs and expenses (up to \$100,000) as supported by declaration; and (e) PAGA Settlement Payment in the amount of \$250,000 payable to the Labor and Workforce Development Agency (“LWDA”) and the PAGA Representative Group. **Class Counsel’s attorneys’ fees and costs and the Service Awards to the Named Plaintiffs remain subject to Court approval.**

By statute, seventy-five percent (75%) of PAGA Settlement Payment (\$187,500) is payable to the LWDA. The remaining twenty-five percent (25%) of the PAGA Settlement Payment (\$62,500) is payable to the PAGA Representative Group.

No portion of the Gross Settlement Amount will be returned to Defendant under any circumstances.

7. How Much Will My Payment Be?

Your estimated Participating Class Member Payment is shown above and is based on the number of workweeks you worked for Capstone during the Class Period as compared to the total number of workweeks worked by all Settlement Class Members during that same period. Based upon Defendant’ records, your workweek number is determined to be «Total_Weeks». If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of workweeks, see below (Question 9).

Your Individual PAGA Payment is shown above and is based on the number of pay periods you worked for Capstone during the Class Period as compared to the total number of pay periods worked by all members of the PAGA Representative Group during that same period. Based upon Defendant’ records, your pay period number is determined to be «Total_Weeks».

8. How Do I Get A Payment?

To qualify for payment, you need not do anything other than inform the Settlement Administrator of your current address (if you have moved from the address listed on this Notice). The Settlement Administrator will mail you a check within approximately 120 days after the Court enters a judgment based on this settlement, but possibly later depending on whether there is any appeal of the judgment entered by the Court.

9. What If I Believe The Information Is Inaccurate?

If you believe the number of workweeks and/or pay periods listed above is inaccurate, you may dispute it by sending a letter to Settlement Administrator, P.O. Box 7208, Orange, CA 92863, no later than **June 15, 2026**. Be sure to include your name, address, telephone number, last four digits of your social security number, and a statement as to what and why you are disputing. Also attach a copy of

any documentation you want to include to support your dispute.

10. What Am I Giving Up To Get A Settlement Payment?

Unless you request to be excluded from the settlement, you will be deemed a Participating Class Member, and that means you cannot sue, continue to sue, or be part of any other lawsuit against the Released Parties for any Released Class Claims. Specifically, you will be giving up or “releasing” the claims described below:

“Released Class Claims” means any and all claims, known or unknown, that were asserted in any and/or all of the LWDA Notices or complaints in the Actions, or that could have been asserted in any and/or all of the LWDA Notices or complaints in the Actions based on the facts and allegations alleged in any complaint or LWDA Notice in the Actions. The Released Class Claims are expressly limited to claims arising during the Class Period, and no claims outside the Class Period are released by this Agreement. The Released Class Claims include but are not limited to all claims that were asserted in the Actions, whether or not specifically delineated as a claim or cause of action in the Actions, including claims for unpaid wages, including failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation; the calculation of the regular rate of pay; reimbursement for business expenses; payment for all hours worked, including off-the-clock work; inaccurate or incomplete wage statements; improper or unauthorized deductions; failure to keep accurate records; unfair business practices; failure to provide meal periods or rest breaks; unpaid meal period or rest break premiums; failure to timely pay wages due during or at separation of employment; penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and interest, attorneys’ fees, and costs. The Released Class Claims include but are not limited to claims arising under the California Labor Code including, but not limited to, sections 200-206, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, 204.2, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2698 et seq., 2699 et seq., 2800, 2802 et seq., 2810, 2810.3, the Wage Orders of the California Industrial Welfare Commission, including but not limited to IWC Wage Order Nos. 4, 5 and 9 (Cal. Code Regs., tit. 8, § 11050), the California Private Attorneys General Act of 2004 (“PAGA”), the California Business and Professions Code section 17200, et seq., 12 CCR § 11040, 8 CCR § 11060, and the California common law.

In addition, as a member of the PAGA Representative Group, you will release the Released Parties from the following claims:

“Released PAGA Claims” means any and all claims, known or unknown, that were asserted in any and/or all of the LWDA Notices or complaints in the Actions, or that could have been asserted in any and/or all of the LWDA Notices or complaints in the Actions based on the facts and allegations alleged in any complaint or LWDA Notice in the Actions. The Released PAGA Claims are expressly limited to claims arising during the Class Period, and no claims outside the Class Period are released by this Agreement. The Released PAGA Claims include but are not limited to all claims that were asserted in the Actions, whether or not specifically delineated as a claim or cause of action in the Actions, including claims for civil penalties relating to, based upon, or arising out of the Released Parties’ alleged failure to properly pay all wages due, provide minimum wages, straight time compensation, overtime compensation, or double-time compensation; failure to properly calculate the regular rate of pay; failure to reimburse business expenses; failure to pay for all hours worked, including off-the-clock work; failure to issue accurate or complete wage statements; alleged improper or unauthorized deductions; failure to keep accurate records; failure to provide meal periods or rest breaks; unpaid meal period or rest break premiums; failure to timely pay wages due during or at separation of employment; claims for penalties, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and claims for interest, attorneys’ fees, and costs. The Released PAGA Claims include but are not limited to claims arising under the California Labor Code including, but not limited to, sections 200-206, 201, 201.1, 201.3, 201.5, 202, 203, 204, 204b, 204.1, and 204.2, 205.5, 206, 210, 216, 218, 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8, 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 1193.6, 2698 et seq., 2699 et seq., 2800, 2802 et seq., 2810, 2810.3, the Wage Orders of the California Industrial Welfare Commission, including but not limited to IWC Wage Order Nos. 4, 5 and 9 (Cal. Code Regs., tit. 8, § 11050), the California Private Attorneys General Act of 2004 (“PAGA”), 12 CCR § 11040, 8 CCR § 11060, and the California common law. The “Released Parties” are Capstone Logistics, LLC and any of its parents, subsidiaries, affiliates, customers, business partners, predecessors or successors, and all agents, employees, officers, directors, and attorneys thereof.

11. Why Does This Notice Look Familiar?

You may have received a similar notice regarding a settlement of this case in 2024. This notice pertains to an amended settlement reached in the same case that includes a larger Gross Settlement Fund, a larger population, and an extended time period.

12. How Do I Exclude Myself From The Settlement?

To exclude yourself from the settlement (also referred to as “opt out”), you must mail a letter to the Settlement Administrator saying that you want to be excluded from the *Verdugo v. Capstone Logistics, LLC* settlement. Be sure to include your name, address, telephone number, last four digits of your social security number, and your signature. You must mail your request for exclusion postmarked no later than **June 15, 2026**, to the Settlement Administrator at Settlement Administrator, P.O. Box 7208, Orange, CA 92863.

If you submit a timely and valid “opt out” request, you will be deemed a Non-Participating Class Member, and you will not receive any money from the class portion of the settlement, or be able to object to the settlement, but you will not be legally bound by the settlement with respect to the Released Class Claims.

Regardless of whether you opt out of the class portion of the settlement, if you will remain a member of the PAGA Representative Group, you will still receive a portion of the PAGA Settlement Payment and be bound by the settlement with respect to the Released PAGA Claims.

13. If I Don't Exclude Myself, Can I Sue Defendant Or Get Money From The Settlement?

If you remain in the settlement, you cannot sue Defendant for any of the claims that this settlement resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue with your own lawsuit. Remember, the exclusion deadline is **June 15, 2026**.

If you exclude yourself from the Settlement, you will not receive any money from the settlement of the class claims in this matter.

14. How Do I Tell The Court That I Don't Believe That The Settlement Is Fair?

If you are a Participating Class Member, you can object to the settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you must do so in writing. If you submit a valid written objection, you may also appear at the final approval hearing for the settlement (see Section 17 below for details as to when this hearing will take place), either in person or through an attorney at your own expense.

In order to be valid, an objection must be signed by you and must include: (1) your full name, address, telephone number, and signature; (2) a written statement of the basis for your objection; and (3) any copies of papers, briefs, or documents upon which the objection is based. You must mail your objection postmarked no later than **June 15, 2026**, to the Settlement Administrator at Settlement Administrator, P.O. Box 7208, Orange, CA 92863.

15. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. However, if you file an objection, you will still receive settlement benefits under the settlement if it is approved by the Court.

16. Do I Have A Lawyer In This Case?

The Court decided that the law firms of The Kick Law Firm, APC and Diversity Law Group, P.C., both of which represent the Named Plaintiffs, are also qualified to represent you and all Settlement Class Members. You will not be charged for these lawyers. These law firms are referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will The Attorneys For The Class And The Class Representative Be Paid?

Class Counsel will be paid from the Gross Settlement Amount. Class Counsel will ask for up to one-third of the Gross Settlement Amount (currently estimated to total \$1,983,333.33) in attorneys' fees and for actual litigation costs, the actual amount of which will be determined by the Court at the final approval hearing (see Question 18 below for details as to when and where this hearing will take place). Settlement Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, then you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, Service Awards for each of the Named Plaintiffs in amounts ranging from \$10,000 to \$25,000 (collectively, up to \$65,000) will be paid from the Gross Settlement Amount for their work and efforts in prosecuting this case, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable).

18. When Is The Notice Of Hearing On Final Approval And Objections To The Class Action Settlement?

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable David C. Beyersdorf on July 31, 2026, at 9:30 a.m., in Department 3 of the Superior Court of California for the County of Tuolumne, located at 12855 Justice Center Drive, Sonora, California, 95370, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct.

Once final approval is granted by the Court, the Court will enter judgment, and all Participating Class Members and members of the PAGA Representative Group will be deemed to have waived the released claims set forth above.

19. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

20. What Is The Contact Information For The Court and Class Counsel?

The addresses for the Court and Class Counsel are as follows:

COURT	CLASS COUNSEL
Clerk of Court Superior Court of California, County of Tuolumne 12855 Justice Center Drive Sonora, California, 95370	THE KICK LAW FIRM, APC Taras Kick Tyler Dosaj 815 Moraga Drive Los Angeles, California 90049 Telephone: (310) 395-2988 taras@kicklawfirm.com tyler@kicklawfirm.com DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Telephone: (213) 488-6555 Facsimile: (213) 488-6554 lwlee@diversitylaw.com kagnew@diversitylaw.com

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Verdugo v. Capstone Logistics LLC
c/o Settlement Administrator
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
Email: info@phoenixclassaction.com

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

EXHIBIT 18



CLASS ACTION SETTLEMENT SOLUTIONS

1411 N. Batavia, Suite 105 Orange, CA 92867

800-523-5773

www.phoenixclassaction.com

CURRICULUM VITAE

Phoenix Settlement Administrators. PSA Overview

Phoenix Settlement Administrators, PSA, is an emerging, National, Class Action Notification and Claims Administration firm, located in San Diego and Newport Beach California. PSA's core competencies ensure delivery of the highest quality and accuracy to its Clients and Class members. With a combined 28 years of expert experience, PSA's Managing Partners, Case Supervisors, Managers and Associates, Data Programming, and Certified Secure Strategic Partners, possess all the qualities that our Clients expect throughout the Noticing and Administration process, to Final Approval. It is our Value Pricing, Efficiency, Experience, Consultative Expertise and Delivery, that has perpetuated PSA, as an emerging leader in Class Action Settlement Administration. Expert PSA staff members are currently managing, Consumer and Product Liability, TCPA, Complex Labor & Employment, FLSA, ERISA and PAGA cases.

PSA has over 100 Attorney & Law Firm Clients, which have entrusted us with the management of their claim's administration, because of the "Boutique" attention every case receives. PSA is value driven on all size cases. large or small, cases receive expert management, secure data custody, neutral communication and a dedicated team. This seamless process maintains superior case continuity to ensure our clients receive timely final approval and conclusion to their actions. Phoenix Settlement Administrators implements its successful C.A.S.E. solutions on all our class action matters.

With 10's of Millions of dollars in award distributions currently under management since our inception, PSA has the ability and strengths to manage all levels of Complex Cases. PSA's Staff "Synergy" is our greatest attribute. It allows our people to work closely together and solve our client's case issues. PSA prides itself as a true "Third Party Administrator" and holds Neutrality as a mantra. Because of this approach, both Defense and Plaintiff Clients, experience fairness, trust and confidence in us, and allows for continued business from both parties. PSA has been appointed Third Party Administrator in State and Federal Courts.

We look forward to working with you on your next Class Action Noticing Campaign or Claims Administration. Let us design a C.A.S.E. solution, which will allow us to showcase the difference you'll experience. Superior Service, Class Savings Value Pricing and Timely Outcomes is why our clients come back to PSA.



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

Partial PSA Client List, Defense and Plaintiff

Fisher & Phillips
Gordon & Rees
Paul Plevin Sullivan & Connaughton
Call & Jensen
Drinker Biddle
McKenna Long & Aldridge
Greenberg Traurig
Manning & Kass
Littler Mendelson
Kring & Chung
Orrick Herrington & Sutcliffe
Ogletree Deakins Nash Smoak & Stewart
Perkins Coie
Ross Wersching & Wolcott
Winston & Strawn
Sheppard Mullins
Lewis Brisbois Bisgaard & Smith
Morgan Lewis & Bockius
Paul Hastings
Park & Zheng
Sidley Austin
Higgs Fletcher & Mack
Jackson Lewis
Norton Rose Fulbright

Law Offices of Jonathan Ricasa
Dente Law Firm
Mahoney Law Group
Law Office of Thomas Rutledge
Law Office of Briana Kim
Dychter Law Firm
Garay Law Firm
Olsen Law Offices
Gould & Associates
Cohelan, Khoury & Singer
Ridout, Lyon & Ottoson
Carter Law Firm
Law Office of Justian Jusuf
The Phelps Law Group
The Emilio Law Group
Zeldes, Haeggquist & Eck
Markham Law Firm
Arias Ozzello & Gignac
David Yeremian & Associates
Aegis Law Firm
Rukin Hyland Doria & Tindall
Malk Law Firm
Spiro Law Corp
Levine Law Group, APC

Phoenix Settlement Administrators 411 N. Batavia, Suite 105 Orange, CA 92867

Phone: 800-784-2174 Fax: 619.338.0308

www.psaaction.com

EXHIBIT 19

Vendor	Amount
LWDA	\$ 75.00
Filing and Service Fees	\$ 6,412.96
Expert Fees	\$ 27,942.15
Mediation Fee	\$ 25,653.32
Travel/lodging/food	\$ 7,836.73
Translation service	\$ 121.38
Court reporter fees	\$ 8,495.70
Postage and delivery	\$ 144.31

Total	\$ 76,681.55
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