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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

23CV417703

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

CHRISTINA DIAZ, as an aggrieved
employee pursuant to the Private
Attorneys General Act (“PAGA”), on
behalf of the State of California and
other non-party Aggrieved
Employees,

Plaintiff,

vs.

THE RK LOGISTICS GROUP, INC.,
a California corporation; and DOES 1
through 10, inclusive,

Defendants.

1 Plaintiff Christina Diaz, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on April 13, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons within the
3 County of Santa Clara, and have violated the requirements of the California Labor Code and
4 applicable Wage Order in this county which give rise to the penalties sought in this action.
5 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
6 California Labor Code and applicable Wage Order in at least one location within the County
7 of Santa Clara, including Defendants' location in Milpitas (1096 Pecten Court, Milpitas,
8 California 95035). Pursuant to California Civil Code of Procedure section 393, venue is
9 proper for the recovery of a penalty imposed by statute in the county in which the cause, or
10 some part of the cause, arose. Because Defendants have employees in Santa Clara County and
11 Plaintiff could bring an action filed under PAGA in any county in which an aggrieved
12 employee worked and Labor Code violations occurred, venue is proper. *Crestwood*
13 *Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

14 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
15 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
16 attorneys general their current or former employers for various civil penalties for violations of
17 various provisions in the California Labor Code.

18 THE PARTIES

19 6. Plaintiff Christina Diaz is a resident of San Jose, in Santa Clara County,
20 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
21 approximately August 2022 to January 2023. Plaintiff worked as a Material Handler I for
22 Defendants at their facility located in Fremont, California. Plaintiff typically worked eight (8)
23 hours per day or more, and five (5) days per week. At the time Plaintiff's employment with
24 Defendants ended, she was compensated approximately \$23.00 per hour. Plaintiff's job duties
25 included, without limitation, monitoring and processing orders, completing paperwork,
26 printing shipping labels, and picking merchandise.

27 7. On information and belief, Defendants required some employees, including
28 Plaintiff, to execute an arbitration agreement at the time of their hire or during their

1 employment. On further information and belief, Defendants' arbitration agreement was and is
2 both procedurally and substantively unconscionable. Specifically, Defendants presented
3 employees with a "Mutual Agreement to Arbitrate Employment-Related Disputes"
4 ("Arbitration Agreement") which had to be reviewed and acknowledged immediately.
5 Specifically, the Arbitration Agreement was one of several documents presented to employees
6 for signature during the orientation process, including Employee Confidentiality Agreement
7 and Controlled Substance & Alcohol Policy. Also, employees did not have a meaningful
8 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
9 Defendants' employees for them to sign on a take-it or leave-it basis, along with other
10 onboarding documents. Further, Defendants did not set forth in the agreement or otherwise
11 provide employees with the rules which will govern the arbitration, instead forcing employees
12 to seek this information out on their own ("A copy of the Rules is available from Employer's
13 Human Resources Department or online at [http://www.jamsadr.com/rules-employment-](http://www.jamsadr.com/rules-employment-arbitration/)
14 [arbitration/](http://www.jamsadr.com/rules-employment-arbitration/)").

15 8. THE RK LOGISTICS GROUP, INC. was and is, upon information and belief, a
16 California corporation, and at all times hereinafter mentioned, an employer whose employees
17 are engaged throughout this county and the State of California.

18 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
19 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
20 amend the complaint and serve such fictitiously named Defendants once their names and
21 capacities become known.

22 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
23 were the partners, agents, owners, or managers of THE RK LOGISTICS GROUP, INC. at all
24 relevant times.

25 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
26 acts and omissions alleged herein was performed by, or is attributable to, THE RK
27 LOGISTICS GROUP, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "RK
28 LOGISTICS"), each acting as the agent, employee, alter ego, and/or joint venturer of, or

1 working in concert with, each of the other co-Defendants and was acting within the course and
2 scope of such agency, employment, joint venture, or concerted activity with legal authority to
3 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
4 represent, the official policy of Defendants.

5 12. At all relevant times, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
7 and abetted the acts and omissions of each and all the other Defendants in proximately causing
8 the damages herein alleged.

9 13. Plaintiff is informed and believes, and thereon alleges, that each of said
10 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
11 omissions, occurrences, and transactions alleged herein.

12 **PAGA REPRESENTATIVE ALLEGATIONS**

13 14. Defendants are a third-party logistics provider providing manufacturing
14 support, warehousing, fulfillment, and transportation services for technology, automotive,
15 pharmaceutical, medical device, and construction industries, operating approximately 12
16 facilities in California. Upon information and belief, Defendants maintain a single,
17 centralized Human Resources (HR) department at their corporate headquarters in Fremont,
18 California, for all non-exempt, hourly paid employees working for Defendants in California,
19 which is responsible for the recruiting and hiring of new employees, and communicating and
20 implementing Defendants' company-wide policies, including timekeeping policies and meal
21 and rest period policies, to employees throughout California.

22 15. In particular, Plaintiff and other non-party Aggrieved Employees, on
23 information and belief, received the same standardized documents and/or written policies.
24 Upon information and belief, the usage of standardized documents and/or written policies,
25 including new-hire documents, indicate that Defendants dictated policies at the corporate level
26 and implemented them company-wide, regardless of their employees' assigned locations or
27 positions. Upon information and belief, Defendants set forth uniform policies and procedures
28 in several documents provided at an employee's time of hire.

1 16. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their corporate headquarters in Fremont, California, which processes payroll for
3 all non-exempt, hourly paid employees working for Defendants at their various locations in
4 California, including Plaintiff and other non-party Aggrieved Employees. Based upon
5 information and belief, Defendants issue the same formatted wage statements to all non-
6 exempt, hourly paid employees in California, irrespective of their work locations. Upon
7 information and belief, Defendants process payroll for departing employees in the same
8 manner throughout the State of California, regardless of the manner in which each employee's
9 employment ends.

10 17. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

12 18. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
14 and advisors knowledgeable about California labor and wage law, employment and personnel
15 practices, and about the requirements of California law.

16 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
17 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
18 were not recorded.

19 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 receive certain wages for overtime compensation and that they were not receiving certain
22 wages for overtime compensation.

23 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or
26 meal and rest period premiums, that included as eligible income all remuneration required by
27 law, including but not limited to, all income derived from shift differential pay, incentive pay,
28 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms

1 of remuneration in calculating the regular rate of pay for Plaintiff and other non-party
2 Aggrieved Employees.

3 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 receive at least minimum wages for compensation and that they were not receiving at least
6 minimum wages for work that was required to be done off-the-clock. In violation of the
7 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
8 least minimum wages for work done off-the-clock.

9 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
12 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
13 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
14 other non-party Aggrieved Employees were not provided with all meal periods or payment of
15 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
16 uninterrupted, thirty (30) minute meal period.

17 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
20 payment of one (1) additional hour of pay at their regular rates of pay when they were not
21 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
22 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
23 provided with payment of one (1) additional hour of pay at their regular rates of pay when
24 they were not authorized and permitted to take a compliant rest period.

25 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 receive complete and accurate wage statements in accordance with California law. In
28 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees

1 were not provided complete and accurate wage statements.

2 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that they had a duty to maintain accurate and complete payroll records in
4 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
5 and intentionally failed to do so.

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 timely payment of wages during their employment. In violation of the California Labor Code,
9 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
10 including, but not limited to, overtime wages, minimum wages, meal and rest period
11 premiums, and/or sick leave pay, within permissible time periods.

12 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 timely payment of all wages earned upon termination of employment. In violation of the
15 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
16 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
17 meal and rest period premiums, and/or sick leave pay, within permissible time periods.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible income,
21 all income derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or
22 other forms of compensation, and to receive itemized wage statements or separate written
23 statements showing the amount of paid sick leave. In violation of the California Labor Code,
24 Defendants failed to include all forms of remuneration in calculating the regular rate of pay
25 for sick leave pay and failed to provide Plaintiff and other non-party Aggrieved Employees
26 with written itemized wage statements showing this information.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive reimbursement for all business-related expenses and costs they incurred during the
2 course and scope of their employment and that they did not receive reimbursement of
3 applicable business-related expenses and costs incurred.

4 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew or should have known that Defendants had a duty to provide
6 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
7 of their employment with Defendants as required by the California Wage Theft Prevention
8 Act, but failed to do so.

9 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to compensate
11 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
12 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
13 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
14 that they were properly denied wages, all in order to increase Defendants' profits.

15 33. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the LWDA for violations of the California Labor Code and
18 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
19 civil action brought on behalf of themselves and other current or former employees pursuant
20 to procedures outlined in California Labor Code section 2699.3.

21 34. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
22 person who was employed by the alleged violator and against whom one or more of the
23 alleged violations was committed."

24 35. Plaintiff and other current and former employees of Defendants are "aggrieved
25 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
26 or former employees and one or more of the alleged violations were committed against them.

27 36. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee shall give written notice by online filing
3 (hereinafter "Employee's Notice") to the LWDA and by certified mail
4 to the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
11 employer and the aggrieved employee by certified mail that it does not
12 intend to investigate the alleged violation within sixty (60) calendar
13 days of the postmark date of the Employee's Notice. Upon receipt of
14 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
15 five (65) calendar days of the postmark date of the Employee's Notice,
16 the aggrieved employee may commence a civil action pursuant to
17 California Labor Code section 2699 to recover civil penalties in addition
18 to any other penalties to which the employee may be entitled.

19 37. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
20 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
21 provision other than those listed in Section 2699.5 after the following requirements have been
22 met:

- 23 (a) The aggrieved employee or representative shall give written notice by
24 online filing to the LWDA and by certified mail to the employer of the
25 specific provisions of the California Labor Code alleged to have been
26 violated (other than those listed in Section 2699.5), including the facts
27 and theories to support the alleged violation.
- 28 (b) An aggrieved employee's notice filed with the LWDA pursuant to

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

38. On April 13, 2023, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-948391-23. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated April 13, 2023, is attached hereto as "Exhibit 1."

39. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the written notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

40. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

41. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
8 as a private attorney general, seeks assessment and collection of civil penalties under Labor
9 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
10 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
11 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
12 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
13 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
14 applicable IWC Wage Order.

15 42. Defendants, at all times relevant to this complaint, were employers or persons
16 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
17 Employees’ rights by violating various sections of the California Labor Code as set forth
18 above.

19 43. As set forth below, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
21 Order.

22 44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
24 private attorney general, seeks assessment and collection of civil penalties for herself, all other
25 non-party Aggrieved Employees, and the State of California against Defendants for violations
26 of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516,
27 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

28 //

1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 45. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 46. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
9 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
10 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
11 Labor Code sections not found in section 2699.5, including sections 246, 248.6, 516, 1182.12,
12 and 2810.5.

13 47. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
16 Wage Order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay, as set
18 forth below;
- 19 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
20 applicable IWC Wage Order for Defendants’ failure to include all forms
21 of remuneration in the regular rate of pay as required by law for
22 purposes of paying overtime wages and/or meal and rest period
23 premiums to Plaintiff and other non-party Aggrieved Employees, as set
24 forth below;
- 25 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
26 the applicable IWC Wage Order for Defendants’ failure to compensate
27 Plaintiff and other non-party Aggrieved Employees with at least
28 minimum wages for all hours worked, as set forth below;

- (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (e) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (f) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (h) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;
- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code sections 246 and 248.6 for failure to properly calculate the sick leave paid to Plaintiff and other non-party Aggrieved Employees and for failure to provide written notice of paid sick leave to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (l) Violation of Labor Code section 2810.5 for failure to provide notice of material terms of employment, as set forth below.

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 48. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
5 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
6 shall be the . . . standard conditions of labor for employees. The employment of any employee
7 . . . under conditions of labor prohibited by the order is unlawful.”

8 49. California Labor Code section 1198 and the applicable IWC Wage Order
9 provide that it is unlawful to employ persons without compensating them at a rate of pay
10 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
11 number of hours worked by the person on a daily or weekly basis.

12 50. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
16 (40) hours in a workweek.

17 51. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and
22 incentive pay.

23 52. California Labor Code section 510 codifies the right to overtime compensation
24 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
25 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
26 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
27 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
28 in a day on the seventh (7th) day of work.

1 53. During the relevant time period, Defendants willfully failed to pay all overtime
2 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
3 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
4 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
5 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
6 not recorded.

7 54. First, Defendants had, and continue to have, a company-wide policy and/or
8 practice of understaffing their facilities while assigning heavy workloads, resulting in Plaintiff
9 and other non-party Aggrieved Employees being required to perform various work-related
10 tasks while off-the-clock after their shifts. For example, Plaintiff was sometimes required to
11 return to the facility after she had already clocked out in order to process a rush order so the
12 shipping department could send it out the same day. Additionally, approximately 2-3 times
13 per week, Defendants' management contacted Plaintiff while she was driving home on her
14 personal cellular phone to discuss various work-related issues, such as status of pending
15 orders. While this off-the-clock work could have been accounted for and recorded by
16 Defendants, instead, Defendants refused to do so to avoid payment of additional wages to
17 Plaintiff and other non-party Aggrieved Employees. Defendants failed to track all of the time
18 that employees spent performing work-related tasks after their scheduled shifts, and Plaintiff
19 and other non-party Aggrieved Employees received no compensation for this time.

20 55. Second, during the relevant time period, Defendants implemented, on a
21 company-wide basis, an employer-imposed requirement that Plaintiff and other non-party
22 Aggrieved Employees undergo mandatory COVID-19 temperature checks and/or health
23 screenings before clocking in for their scheduled shifts. Prior to her shift, Plaintiff was
24 required to spend a few minutes per instance waiting and then undergoing a mandatory
25 temperature check and answering questions pertaining to any possible symptoms, before being
26 permitted to clock in for her shift. Even though Defendants required these health screenings,
27 Defendants did not provide Plaintiff and other non-party Aggrieved Employees a mechanism
28 to record this time worked so they could be compensated for the time spent undergoing

1 mandatory temperature checks and/or health screenings.

2 56. Third, Defendants' policies and/or practices of understaffing their facilities
3 while assigning heavy workloads, including pressuring employees to meet certain deadlines,
4 such as fulfilling rush orders (*see infra*), resulted in a failure to provide Plaintiff and other
5 non-party Aggrieved Employees with adequate meal period coverage, and thus, Plaintiff and
6 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
7 periods during shifts when they were entitled to receive a meal period. Defendants also had a
8 practice of failing to schedule meal periods, which further caused Plaintiff and other non-party
9 Aggrieved Employees to not be relieved of their duties for compliant meal periods. For
10 example, Plaintiff worked through her unpaid meal periods approximately 2-3 times per week
11 and had her meals interrupted two (2) times per week due to the heavy workload and lack of
12 coverage. Thus, Plaintiff and other non-party Aggrieved Employees worked through meal
13 periods and/or had meal periods interrupted in order to complete their assigned workloads and
14 meet deadlines. Defendants did not compensate Plaintiff and other non-party Aggrieved
15 Employees for the time they spent working off the clock during unpaid meal periods.

16 57. Moreover, Plaintiff and other non-party Aggrieved Employees were required to
17 respond to calls from management on their personal cellular phones during unpaid meal
18 periods. Defendants knew or should have known that Plaintiff and other non-party Aggrieved
19 Employees were being made to work during unpaid meal periods, including communicating
20 with management in order to meet Defendants' expectations, but failed to compensate them
21 for this off-the-clock work.

22 58. Further, because Defendants frowned upon employees accruing meal period
23 penalties, Defendants' management pressured employees to clock out for meal periods to
24 reflect compliant meal periods and/or adjusted employee time records, regardless of whether
25 they had received a compliant meal period or not, in order to strictly limit meal penalties that
26 would need to be paid by Defendants. Consequently, Plaintiff and other non-party Aggrieved
27 Employees performed work during meal periods for which they were not paid.

28 59. Defendants knew or should have known that as a result of these company-wide

1 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
2 their assigned duties off-the-clock before and after their shifts and during meal periods, and
3 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
4 and other non-party Aggrieved Employees worked shifts of eight (8) hours or more a day, or
5 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
6 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
7 overtime wages for all of the overtime hours they actually worked.

8 60. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
9 Employees the correct overtime rate for the recorded overtime hours that they generated. In
10 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
11 Employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms
12 of remuneration. However, in violation of the California Labor Code, Defendants failed to
13 incorporate all compensation, including shift differential pay, incentive pay, nondiscretionary
14 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
15 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
16 other non-party Aggrieved Employees worked overtime and received these other forms of
17 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
18 required.

19 61. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
20 the balance of overtime compensation as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY MINIMUM WAGES**

25 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

26 62. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
27 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
28 to be paid to employees, and the payment of a wage less than the minimum so fixed is

1 unlawful. Compensable work time is defined in Wage Order No. 9-2001 as “the time during
2 which an employee is subject to the control of an employer, and includes all the time the
3 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs.
4 tit. 8, § 11090(2)(H) (defining “Hours Worked”).

5 63. As set forth above, Defendants had a company-wide policy requiring Plaintiff
6 and other non-party Aggrieved Employees to perform work off-the-clock before and after
7 their scheduled shifts, including preparing rush orders, communicating with management
8 regarding work related issues, and undergoing temperature checks and/or health screenings.

9 64. Further, as also stated above, due to Defendants’ policies and/or practices of
10 understaffing their facilities while assigning heavy workloads, enforcing rush order fulfillment
11 deadlines, and failing to schedule meal periods, Plaintiff and other non-party Aggrieved
12 Employees were impeded from taking all uninterrupted meal periods to which they were
13 entitled and were required to work off-the-clock during meal periods. Additionally, as stated,
14 Plaintiff would be required to respond to calls from management on her personal cellular
15 phone during unpaid meal periods. Further, to limit the meal penalties that Defendants would
16 otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees to
17 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
18 periods, but required them to continue working, time for which they were not paid. Thus,
19 Defendants systematically failed to pay Plaintiff and other non-party Aggrieved Employees
20 for actual hours worked during unpaid meal periods because these hours were not always
21 correctly recorded.

22 65. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
23 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
24 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
25 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
26 1194, 1197, and 1198.

27 66. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
28 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.

1 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
2 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
4 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

5 67. At all relevant times herein set forth, the applicable IWC Wage Order and
6 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
7 non-party Aggrieved Employees' employment by Defendants.

8 68. At all relevant times herein set forth, California Labor Code section 512(a)
9 provides that an employer may not require, cause, or permit an employee to work for a period
10 of more than five (5) hours per day without providing the employee with a meal period of not
11 less than thirty (30) minutes, except that if the total work period per day of the employee is
12 not more than six (6) hours, the meal period may be waived by mutual consent of both the
13 employer and the employee. Under California law, first meal periods must start after no more
14 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

15 69. At all relevant times herein set forth, California Labor Code sections 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 70. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
19 and the applicable IWC Wage Order also require employers to provide a second meal period
20 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
21 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
22 total hours worked is no more than twelve (12) hours, the second meal period may be waived
23 by mutual consent of the employer and the employee only if the first meal period was not
24 waived.

25 71. As stated above, during the relevant time period, Defendants had, and continue
26 to have, company-wide policies and/or practices of understaffing their facilities and assigning
27 strict order fulfillment deadlines. Defendants enforced certain shipping deadlines, which
28 required that rush orders be processed, picked up from the warehouse, and prepared for

1 shipping within 30 minutes of the rush order coming in. However, Defendants understaffed
2 their facilities in order to reduce and limit their labor costs, resulting in Plaintiff's meal
3 periods being missed, interrupted, cut short, or taken late in order to attend to rush order
4 fulfillment. These company-wide practices, combined with the failure to schedule meal
5 periods, led to a lack of meal period coverage and prevented Plaintiff and other non-party
6 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
7 entitled. The resulting lack of meal period coverage was exacerbated by the shortage of
8 employees on duty to handle the workload.

9 72. As a result, Plaintiff and other non-party Aggrieved Employees would be
10 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
11 meal periods interrupted and/or had to forgo their meal periods altogether. For example,
12 Plaintiff missed her meal periods entirely 2-3 times per week and regularly had to take her
13 meal periods after her fifth hour of work because of understaffing and in order to meet the
14 rush order deadlines. As a further example, Plaintiff's meal periods were interrupted twice
15 per week by phone calls from management asking her questions about the status of the orders.
16 Further, because Defendants frowned upon employees accruing meal period penalties,
17 Defendants' management pressured employees to clock out for meal periods to reflect
18 compliant meal periods and/or adjusted employee time records, regardless of whether they had
19 received a compliant meal period or not, in order to strictly limit meal penalties that would
20 need to be paid by Defendants.

21 73. Moreover, Defendants did not provide other non-party Aggrieved Employees
22 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
23 one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
24 waivers on days that they were entitled to meal periods and were not relieved of all duties.

25 74. At all times herein mentioned, Defendants knew or should have known that, as
26 a result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented
27 from being relieved of all duties and required to perform some of their assigned duties during
28 meal periods. Defendants further knew or should have known that they did not pay Plaintiff

1 and other non-party Aggrieved Employees meal period premiums when meal periods were
2 late, interrupted, shortened, and/or missed.

3 75. Moreover, Defendants engaged in a company-wide practice and/or policy of
4 not paying all meal period premiums owed when compliant meal periods are not provided.
5 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
6 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
7 to the extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees
8 premium pay for missed, late, and interrupted meal periods, Defendants did not pay Plaintiff
9 and other non-party Aggrieved Employees at the correct rate of pay for premiums because
10 Defendants systematically failed to include all forms of compensation, such as shift
11 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
12 in the regular rate of pay.

13 76. Defendants' conduct violates the applicable IWC Wage Order, and California
14 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
15 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
16 558 and/or 2699(a), (f), and (g).

17 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

18 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

19 77. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
21 non-party Aggrieved Employees' employment by Defendants.

22 78. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3 ½) hours.

28 79. At all relevant times, California Labor Code section 226.7 provides that no

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

8 80. Pursuant to the applicable IWC Wage Order and California Labor Code section
9 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
10 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
11 required rest period was not authorized and permitted.

12 81. During the relevant time period, Defendants regularly failed to authorize and
13 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
14 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
15 Defendants’ company-wide practices, including understaffing and assigning heavy workloads,
16 including pressure to meet order fulfillment deadlines, prevented Plaintiff and other non-party
17 Aggrieved Employees from being relieved of all duty to take rest periods. Additionally,
18 Defendants failed to adhere to a schedule for rest periods, which, coupled with Defendants’
19 failure to provide adequate rest period coverage, further led to Plaintiff and other non-party
20 Aggrieved Employees not being authorized and permitted to take rest periods.

21 82. Furthermore, on information and belief, Defendants maintained and
22 implemented a company-wide on-premises rest period policy, which effectively required that
23 Plaintiff and other non-party Aggrieved Employees remain on the premises during their rest
24 periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from
25 leaving Defendants’ premises during rest periods, they were denied the ability to use their rest
26 periods freely for their own purposes, such as running personal errands. Thus, Defendants
27 effectively maintained control over Plaintiff and other non-party Aggrieved Employees during
28 rest periods.

1 83. As a result of Defendants’ practices and policies, Plaintiff and other non-party
2 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
3 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
4 were entitled. For example, Plaintiff missed at least four (4) rest periods per week and
5 occasionally had her rest periods interrupted by supervisors wanting to discuss work-related
6 issues, such as the status of inventory.

7 84. Defendants has also engaged in a systematic, company-wide practice and/or
8 policy of not paying rest period premiums owed when rest periods are not authorized and
9 permitted. Because Defendants frowned upon employees accruing rest period penalties,
10 Defendants pressured Plaintiff and other non-party Aggrieved Employees to falsify the time
11 rest periods were taken on their timesheets and/or adjusted employee records to reflect
12 compliant and/or timely rest periods, regardless of whether Plaintiff and other non-party
13 Aggrieved Employees had received a compliant rest period at that time or not, in order to
14 strictly limit rest period penalties that Defendants would otherwise owe. As a result of this
15 practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received
16 premium pay for all missed rest periods. Alternatively, to the extent that Defendants did pay
17 Plaintiff and other non-party Aggrieved Employees one (1) additional hour of premium pay
18 for missed rest periods, Defendants did not pay Plaintiff and other non-party Aggrieved
19 Employees at the correct rate of pay for premiums because Defendants failed to include all
20 forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses,
21 and/or other forms of remuneration, in the regular rate of pay.

22 85. Accordingly, Defendants failed to authorize and permit all compliant rest
23 periods and failed to pay the full rest period premiums due. Defendants’ conduct violates the
24 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
25 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

27 ///

28 ///

FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS
VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

86. At all relevant times herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

87. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

89. Additionally, because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the

1 correct amount of gross wages in compliance with section 226(a)(1). For the same reason,
2 Defendants also failed to list the correct amount of net wages in violation of section 226(a)(5).
3 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
4 period, namely, correct rates of pay for overtime wages, meal and rest period premiums,
5 and/or paid sick leave, in violation of section 226(a)(9).

6 90. The wage statement deficiencies also include, among other things, failing to list
7 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
8 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
9 for which aggrieved employees were paid; failing to list the name of the employee and only
10 the last four digits of his or her social security number or an employee identification number
11 other than a social security number; failing to list the name and address of the legal entity that
12 is the employer; and/or failing to state all hours worked as a result of not recording or stating
13 the hours worked off-the-clock.

14 91. California Labor Code section 1174(d) provides that “[e]very person employing
15 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or
20 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
21 civil penalty if they fail to maintain accurate and complete records as required by section
22 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
23 willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
24 Employees showing the daily hours they worked and the wages paid thereto as a result of failing
25 to record the off-the-clock hours that they worked.

26 92. California Labor Code section 1198 provides that the maximum hours of work
27 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
28 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he

1 employment of any employees for longer hours than those fixed by the order or under
2 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
3 Wage Order, employers are required to keep accurate time records showing when the
4 employee begins and ends each work period and meal period. During the relevant time
5 period, Defendants engaged in company-wide practices and/or policies of failing to record
6 actual hours worked (including falsifying time records by recording that compliant meal
7 periods were taken regardless of if or when meal periods were actually taken), and thereby
8 failed to keep accurate records of work period and meal period start and stop times for
9 Plaintiff and other non-party Aggrieved Employees, in violation of section 1198. Also, in
10 light of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-
11 minute meal periods to which they were entitled, Defendants kept no records of meal start and
12 end times for second meal periods.

13 93. Defendants’ conduct violates California Labor Code 226(a), 1174(d), and 1198.
14 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

16 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

17 **VIOLATION OF LABOR CODE SECTION 204**

18 94. At all relevant times herein set forth, California Labor Code section 204
19 requires that all wages earned by any person in any employment between the 1st and the 15th
20 days, inclusive, of any calendar month, other than those wages due upon termination of an
21 employee, are due and payable between the 16th and the 26th day of the month during which
22 the labor was performed. Labor Code section 204 further provides that all wages earned by
23 any person in any employment between the 16th and the last day, inclusive, of any calendar
24 month, other than those wages due upon termination of an employee, are due and payable
25 between the 1st and the 10th day of the following month.

26 95. At all relevant times herein, California Labor Code section 204 also requires
27 that all wages earned for labor in excess of the normal work period shall be paid no later than
28 the payday for the next regular payroll period. Alternatively, at all relevant times herein,

1 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
2 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
3 more than seven (7) calendar days following the close of the payroll period.

4 96. During the relevant time period, Defendants willfully failed to pay Plaintiff and
5 other non-party Aggrieved Employees all wages due to them within any time period specified
6 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
7 wages, meal and rest period premiums, and/or sick leave pay.

8 97. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
9 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

10 **FAILURE TO PAY WAGES UPON TERMINATION**

11 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

12 98. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
13 that if an employer discharges an employee, the wages earned and unpaid at the time of
14 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
15 her employment, his or her wages shall become due and payable not later than seventy-two
16 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
17 his or her intention to quit, in which case the employee is entitled to his or her wages at the
18 time of quitting.

19 99. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
20 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
21 above, including but not limited to, overtime wages, minimum wages, meal and rest period
22 premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72)
23 hours of their leaving Defendants' employ.

24 100. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
25 who are no longer employed by Defendants their wages earned and unpaid at the time of
26 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
27 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
28 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or

1 2699(a), (f), and (g).

2 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY AND**
3 **FAILURE TO PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE**
4 **VIOLATION OF LABOR CODE SECTION 246 AND 248.6**

5 101. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
6 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
7 days from the commencement of employment with paid sick days, to be accrued at least one
8 hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must
9 provide an employee with written notice that sets forth the amount of paid sick leave
10 available, or paid time off that an employer provides in lieu of sick leave, for use on either the
11 employee's itemized wage statement or in a separate written statement provided on the
12 designated pay date with the employee's wages. Further, Labor Code section 246(l) provides
13 that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid
14 sick time for nonexempt employees shall be calculated in the same manner as the regular rate
15 of pay for the workweek in which the employee uses paid sick time, whether or not the
16 employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt
17 employees shall be calculated by dividing the employee's total wages, not including overtime
18 premium pay, by the employee's total hours worked in the full pay periods of the prior 90
19 days of employment."

20 102. At all relevant times here, California Labor Code section 248.6 provides
21 covered employees with COVID-19 supplemental paid sick leave. Labor Code section
22 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately
23 from paid sick days and that an "employer shall provide an employee with written notice that
24 sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used
25 through the pay period in which it was due to be paid on either the employee's itemized wage
26 statement . . . or in a separate written statement provided on the designated pay date with the
27 employee's payment of wages. The employer shall list zero hours used if a worker has not
28 used any COVID-19 supplemental paid sick leave." Further, Labor Code section

1 248.6(b)(3)(A), provides each hour of COVID-19 supplemental paid sick leave shall be
2 compensated at a rate equal to the following: 1) “[c]alculated in the same manner as the
3 regular rate of pay for the workweek in which the employee uses paid sick time, whether or
4 not the employee actually works overtime in that workweek[;]” or 2) “[c]alculated by dividing
5 the employee’s total wages, not including overtime premium pay, by the employee’s total
6 nonovertime hours worked in the full pay periods occurring within the prior 90 days of
7 employment; provided that, for nonexempt employees paid by piece rate, commission or other
8 method that uses all hours to determine the regular rate of pay, total wages, not including
9 overtime premium pay, shall be divided by all hours, to determine the correct amount of
10 COVID-19 supplemental paid sick leave under this subdivision.”

11 103. During the relevant time period, Defendants did not pay Plaintiff and other non-
12 party Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage,
13 Defendants paid Plaintiff and other non-party Aggrieved Employees shift differential pay,
14 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in
15 violation of the California Labor Code, Defendants failed to incorporate all remunerations,
16 including shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the
17 calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore,
18 during times when Plaintiff and other non-party Aggrieved Employees took sick leave and
19 received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a
20 lower sick leave rate than required. Specifically, Defendants paid Plaintiff and other non-
21 party Aggrieved Employees sick leave based on their hourly rate of pay instead of their
22 regular rate of pay. Defendants’ failure to properly calculate the sick leave rates of pay based
23 on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and
24 other non-party Aggrieved Employees on a company-wide basis in violation of California Labor
25 Code sections 246(l) and 248.6(b)(3)(A).

26 104. Moreover, during the relevant time period, Defendants failed, on a company-
27 wide basis, to provide Plaintiff and other non-party Aggrieved Employees with written notice
28 on wage statements and/or other separate written statements that listed the amount of COVID-

1 19 supplemental paid sick leave used by them. Defendants' systematic failure to provide
2 written notice of COVID-19 supplemental paid sick leave benefits to Plaintiff and other non-
3 party Aggrieved Employees violates Labor Code section 248.6(d).

4 105. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
5 recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **VIOLATION OF LABOR CODE SECTION 2802**

8 106. At all times herein set forth, California Labor Code section 2802 provides that
9 an employer must reimburse employees for all necessary expenditures and losses incurred by
10 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
11 to prevent employers from passing off their cost of doing business and operating expenses on
12 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
13 (2014). The applicable wage order, IWC Wage Order No. 9-2001 provides that: "[w]hen tools
14 or equipment are required by the employer or are necessary to the performance of a job, such
15 tools and equipment shall be provided and maintained by the employer, except that an
16 employee whose wages are at least two (2) times the minimum wage provided herein may be
17 required to provide and maintain hand tools and equipment customarily required by the trade
18 or craft."

19 107. During the relevant time period, Plaintiff and other non-party Aggrieved
20 Employees were required to use their personal mobile devices, including, but not limited to,
21 cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to
22 reimburse them for the costs of their work-related mobile device expenses. For example,
23 Plaintiff was required to use her personal cellular phone to communicate with management
24 and co-workers about work-related matters. Although Defendants required Plaintiff and other
25 non-party Aggrieved Employees to use their personal mobile devices and mobile data to carry
26 out their work-related duties, Defendants failed to reimburse them for their costs incurred.

27 108. Defendants could have provided Plaintiff and other non-party Aggrieved
28 Employees with the actual equipment for use on the job, such as company mobile devices, or

1 Defendants could have reimbursed employees for their mobile device usage. Instead,
2 Defendants passed these operating costs off onto Plaintiff and other non-party Aggrieved
3 Employees.

4 109. Defendants' company-wide policy and/or practice of not reimbursing
5 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
6 and other non-party Aggrieved Employees violates California Labor Code section 2802.
7 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
8 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
10 **EMPLOYMENT**

11 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

12 110. California's Wage Theft Prevention Act was enacted to ensure that employers
13 provide employees with basic information material to their employment relationship at the
14 time of hiring, and to ensure that employees are given written and timely notice of any
15 changes to basic information material to their employment. Codified at California Labor
16 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
17 employer must provide written notice to employees containing basic and material payroll
18 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
19 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
20 overtime, the regular payday designated by the employer, and any allowances claims as part
21 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
22 (C).

23 111. At all relevant times, Defendants failed, on a company-wide basis, to provide
24 written notice to Plaintiff and other non-party Aggrieved Employees that lists the requisite
25 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

26 112. Defendants' failure to provide Plaintiff and other non-party Aggrieved
27 Employees with written notice of basic information regarding their employment with
28 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-

1 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
2 Code sections 2699(a), (f), and (g).

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
7 judgment against Defendants, jointly and severally, as follows:

8 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
9 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
10 amount.

11 **As to the First Cause of Action**

12 2. That the Court declare, adjudge and decree that Defendants violated the
13 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
14 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
15 (by failing to include all forms of remuneration in the regular rate of pay for purposes of
16 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
17 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
18 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
19 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
20 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
21 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
22 termination); 246 and 248.6 (by failing to properly calculate sick leave pay and provide
23 written notice of paid sick leave available); 2802 (by failing to reimburse business expenses);
24 and 2810.5 (by failing to provide written notice of information material to employment);

25 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
26 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
27 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
28 1198, 2802, and 2810.5;

1 4. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d),
4 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

5 5. For pre-judgment and post-judgment interest as provided by law; and

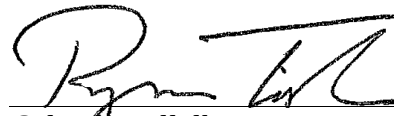
6 6. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 Dated: June 20, 2023

Respectfully submitted,

Capstone Law APC

10
11
12 By: _____



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EXHIBIT “1”



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April 13, 2023

VIA ONLINE SUBMISSION

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

Subject: *Christina Diaz v. The RK Logistics Group, Inc.*

Dear PAGA Administrator:

This office represents Christina Diaz in connection with her claims under the California Labor Code. Ms. Diaz was an employee of THE RK LOGISTICS GROUP, INC. ("RK LOGISTICS").

The employer may be contacted directly at the address below:

THE RK LOGISTICS GROUP, INC.
41707 CHRISTY STREET
FREMONT, CA 94538

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

RK LOGISTICS employed Ms. Diaz as an hourly paid, non-exempt employee from approximately August 2022 to January 2023. Ms. Diaz worked for RK LOGISTICS as a Material Handler I at its facility in Fremont, California. During her employment, Ms. Diaz typically worked eight (8) or more hours per day and five (5) days per week. At the time her employment ended, Ms. Diaz was compensated approximately \$23.00 per hour. Ms. Diaz's primary job duties included, without limitation, monitoring and processing orders, completing paperwork, printing shipping labels, and picking merchandise.

RK LOGISTICS committed one or more of the following Labor Code violations against Ms. Diaz, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

RK LOGISTICS’s Company-Wide and Uniform Payroll and HR Practices

THE RK LOGISTICS GROUP, INC. is a California corporation and is a third-party logistics provider providing manufacturing support, warehousing, fulfillment, and transportation services for technology, automotive, pharmaceutical, medical device, and construction industries, operating approximately eleven (11) facilities in California. Upon information and belief, RK LOGISTICS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fremont, California, for all non-exempt, hourly paid employees working for RK LOGISTICS in California, including Ms. Diaz and other aggrieved employees. At all relevant times, RK LOGISTICS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Diaz and other aggrieved employees, regardless of their location or position.

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

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

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

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

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

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

First, RK LOGISTICS had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while assigning heavy workloads, resulting in Ms. Diaz and other aggrieved employees being required to perform various work-related tasks while off-the-clock after their shifts. For example, Ms. Diaz was sometimes required to return to the facility after she had already clocked out in order to process a rush order so the shipping department could send it out the same day. Additionally, approximately 2-3 times per week, RK LOGISTICS's management contacted Ms. Diaz while she was driving home on her personal cellular phone to discuss various work-related issues, such as status of pending orders. While this off-the-clock work could have been accounted for and recorded by RK LOGISTICS, instead, RK LOGISTICS refused to do so to avoid payment of additional wages to Ms. Diaz and other aggrieved employees. RK LOGISTICS failed to track all of the time that employees spent performing work-related tasks after their scheduled shifts, and Ms. Diaz and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, RK LOGISTICS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Diaz and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to her shift, Ms. Diaz was required to spend a few minutes per instance waiting and then undergoing a mandatory temperature check and answering questions pertaining to any possible symptoms, before being permitted to clock in for her shift. Even though RK LOGISTICS required these health screenings, RK LOGISTICS did not provide Ms. Diaz and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, RK LOGISTICS's policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressuring employees to meet certain deadlines, such as fulfilling rush orders (*see infra*), resulted in a failure to provide Ms. Diaz and other aggrieved employees with adequate meal period coverage, and thus, Ms. Diaz and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. RK LOGISTICS also had a practice of failing to schedule meal periods, which further caused Ms. Diaz and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Diaz worked through her unpaid meal periods approximately 2-3 times per week and had her meals interrupted two (2) times per week due to the heavy workload and lack of coverage. Thus, Ms. Diaz and other aggrieved employees worked through meal periods and/or had meal periods interrupted in order to complete their assigned workloads and meet deadlines. RK LOGISTICS did not compensate Ms. Diaz and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Moreover, Ms. Diaz and other aggrieved employees were required to respond to calls from management on their personal cellular phones during unpaid meal periods. RK LOGISTICS knew or should have known that Ms. Diaz and other aggrieved employees were being made to work during unpaid meal periods, including communicating with management in order to meet RK LOGISTICS's expectations, but failed to compensate them for this off-the-clock work.

Further, because RK LOGISTICS frowned upon employees accruing meal period penalties, RK LOGISTICS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a

compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by RK LOGISTICS. Consequently, Ms. Diaz and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, RK LOGISTICS did not pay Ms. Diaz and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RK LOGISTICS paid Ms. Diaz and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RK LOGISTICS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Ms. Diaz and other aggrieved employees worked overtime and received these other forms of pay, RK LOGISTICS failed to pay all overtime wages by paying a lower overtime rate than required.

RK LOGISTICS's failure to pay Ms. Diaz and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 9-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11090(2)(H) (defining "Hours Worked").

As set forth above, RK LOGISTICS had a company-wide policy requiring Ms. Diaz and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts, including preparing rush orders, communicating with management regarding work related issues, and undergoing temperature checks and/or health screenings.

Further, as also stated above, due to RK LOGISTICS's policies and/or practices of understaffing its facilities while assigning heavy workloads, enforcing rush order fulfillment deadlines, and failing to schedule meal periods, Ms. Diaz and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods. Additionally, as stated, Ms. Diaz would be required to respond to calls from management on her personal cellular phone during unpaid meal periods. Further, to limit the meal

penalties that RK LOGISTICS would otherwise owe, RK LOGISTICS pressured Ms. Diaz and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Thus, RK LOGISTICS systematically failed to pay Ms. Diaz and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Accordingly, RK LOGISTICS regularly failed to pay at least minimum wages to Ms. Diaz and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated above, during the relevant time period, RK LOGISTICS had, and continues to have, company-wide policies and/or practices of understaffing its facilities and assigning strict order fulfillment deadlines. RK LOGISTICS enforced certain shipping deadlines, which required that rush orders be processed, picked up from the warehouse, and prepared for shipping within 30 minutes of the rush order coming in. However, RK LOGISTICS understaffed its facilities in order to reduce and limit its labor costs, resulting in Ms. Diaz's meal periods being missed, interrupted, cut short, or taken late in order to attend to rush order fulfillment. These company-wide practices, combined with the failure to schedule meal periods, led to a lack of meal period coverage and prevented Ms. Diaz and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. The resulting lack of meal period coverage was exacerbated by the shortage of employees on duty to handle the workload.

As a result, Ms. Diaz and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Ms. Diaz missed her meal periods entirely 2-3 times per week and regularly had to take her meal periods after her fifth hour of work because of understaffing and in order to meet the rush order deadlines. As a further example, Ms. Diaz's meal periods were interrupted twice per week by phone calls from management asking her questions about the status of the orders. Further, because RK LOGISTICS frowned upon employees accruing meal period penalties, RK LOGISTICS's management pressured employees to clock out for meal periods to reflect compliant meal periods and/or adjusted employee time records, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by RK LOGISTICS.

Moreover, RK LOGISTICS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Diaz and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, RK LOGISTICS knew or should have known that, as a result of these policies, Ms. Diaz and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. RK LOGISTICS further knew or should have known that it did not pay Ms. Diaz and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Moreover, RK LOGISTICS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Diaz and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that RK LOGISTICS did pay Ms. Diaz and other aggrieved employees premium pay for missed, late, and interrupted meal periods, RK LOGISTICS did not pay Ms. Diaz and other aggrieved employees at the correct rate of pay for premiums because RK LOGISTICS systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RK LOGISTICS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, RK LOGISTICS regularly failed to authorize and permit Ms. Diaz and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, RK LOGISTICS’s company-wide practices, including understaffing and assigning heavy workloads, including pressure to meet order fulfillment deadlines, prevented Ms. Diaz and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, RK LOGISTICS failed to adhere to a schedule for rest periods, which, coupled with RK LOGISTICS’s failure to provide adequate rest period coverage, further led to Ms. Diaz and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, RK LOGISTICS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Diaz and other aggrieved employees remain on the premises during their rest periods. Because Ms. Diaz and other aggrieved employees were restricted from leaving RK LOGISTICS’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, RK LOGISTICS effectively maintained control over Ms. Diaz and other aggrieved employees during rest periods.

As a result of RK LOGISTICS’s practices and policies, Ms. Diaz and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Diaz missed at least four (4) rest periods per week and occasionally had her rest periods interrupted by supervisors wanting to discuss work-related issues, such as the status of inventory.

RK LOGISTICS has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because RK LOGISTICS frowned upon employees accruing rest period penalties, RK LOGISTICS pressured Ms. Diaz and other aggrieved employees to falsify the time rest periods were taken on their timesheets and/or adjusted employee records to reflect compliant and/or timely rest periods, regardless of whether Ms. Diaz and other aggrieved employees had received a compliant rest period at that time or not, in order to strictly limit rest period penalties that RK LOGISTICS would otherwise owe. As a result of this practice and/or policy, Ms. Diaz and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RK LOGISTICS did pay Ms. Diaz and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RK LOGISTICS did not pay Ms. Diaz and other aggrieved employees at the correct rate of pay for premiums because RK LOGISTICS failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, RK LOGISTICS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Diaz and other aggrieved employees are entitled to

recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

During the relevant time period, RK LOGISTICS has knowingly and intentionally provided Ms. Diaz and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RK LOGISTICS issued uniform wage statements to Ms. Diaz and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, RK LOGISTICS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Additionally, because RK LOGISTICS did not calculate Ms. Diaz's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, RK LOGISTICS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, RK LOGISTICS also failed to list the correct amount of net wages in violation of section 226(a)(5). RK LOGISTICS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Further, and separate from these violations, RK LOGISTICS issued uniform wage statements to Ms. Diaz and other aggrieved employees that fail to list the correct address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including

filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Ms. Diaz’s and other aggrieved employees’ wage statements incorrectly list the employer’s address as “PO Box 610670, San Jose, CA 95161” but, according to the California Secretary of State’s website, the correct address is “41707 Christy Street, Fremont, California 94538.” *See paystub excerpt below.*

The RK Logistics Group, Inc PO Box 610670 San Jose, CA 95161			
		Direct Deposit Advice Check Date January 6, 2023	Voucher Number 

DIRECT DEPOSIT VOUCHER		Direct Deposits	Type	Account	Amount
			C		400.04
		Total Direct Deposits			400.04

 Christina R Diaz 	Liability - This is not a check - Non Negotiable
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The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), RK LOGISTICS willfully failed to maintain accurate payroll records for Ms. Diaz and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, RK LOGISTICS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and stop times for Ms. Diaz and other aggrieved employees, in violation of section 1198. Also, in light of RK

LOGISTICS's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, RK LOGISTICS kept no records of meal start and end times for second meal periods.

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

Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, RK LOGISTICS failed to pay Ms. Diaz and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

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

RK LOGISTICS willfully failed to pay Ms. Diaz and other aggrieved employees who are no longer employed by RK LOGISTICS all their earned wages, including, but not limited to, overtime wages,

minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving RK LOGISTICS's employ.

Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 246 and 248.6 – Failure to Properly Calculate Paid Sick Leave and Failure to Provide Written Notice of Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times herein, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. Labor Code section 248.6(d) provides that COVID-19 supplemental paid sick leave shall be set forth separately from paid sick days and that an "employer shall provide an employee with written notice that sets forth the amount of COVID-19 supplemental paid sick leave that the employee has used through the pay period in which it was due to be paid on either the employee's itemized wage statement . . . or in a separate written statement provided on the designated pay date with the employee's payment of wages. The employer shall list zero hours used if a worker has not used any COVID-19 supplemental paid sick leave." Further, California Labor Code section 248.6(b)(3)(A), provides that each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision."

During the relevant time period, RK LOGISTICS did not pay Ms. Diaz and other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, RK LOGISTICS paid Ms. Diaz and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RK LOGISTICS failed to incorporate all remunerations, including shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of

calculating the sick leave rate. Therefore, during times when Ms. Diaz and other aggrieved employees took sick leave and received these other forms of pay, RK LOGISTICS failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, RK LOGISTICS paid Ms. Diaz and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay. RK LOGISTICS's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Diaz and other aggrieved employees on a company-wide basis, in violation of Labor Code sections 246(1) and 248.6(b)(3)(A).

Moreover, during the relevant time period, RK LOGISTICS failed, on a company-wide basis, to provide Ms. Diaz and other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of COVID-19 supplemental paid sick leave used by them. RK LOGISTICS's systematic failure to provide written notice of COVID-19 supplemental paid sick leave benefits to Ms. Diaz and other aggrieved employees violates Labor Code section 248.6(d).

Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 9-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, Ms. Diaz and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but RK LOGISTICS failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Diaz was required to use her personal cellular phone to communicate with management and co-workers about work-related matters. Although RK LOGISTICS required Ms. Diaz and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, RK LOGISTICS failed to reimburse them for their costs incurred.

RK LOGISTICS could have provided Ms. Diaz and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, or RK LOGISTICS could have reimbursed employees for their mobile device usage. Instead, RK LOGISTICS passed these operating costs off onto Ms. Diaz and other aggrieved employees.

Thus, RK LOGISTICS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, RK LOGISTICS failed, on a company-wide basis, to provide written notice to Ms. Diaz and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). RK LOGISTICS's failure to provide Ms. Diaz and other aggrieved employees with written notice of basic information regarding their employment with RK LOGISTICS is in violation of Labor Code section 2810.5.

Ms. Diaz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Diaz seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Diaz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against RK LOGISTICS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248.6, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

This notice shall further serve as Ms. Diaz's reasonable attempt to settle her dispute with RK LOGISTICS prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform RK LOGISTICS of Ms. Diaz's aforementioned grievances and the proposed remedies as detailed below, while affording RK LOGISTICS a reasonable opportunity to satisfy Ms. Diaz's demands.

Demand is hereby made that RK LOGISTICS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. RK LOGISTICS shall pay Ms. Diaz and all other aggrieved employees employed by RK LOGISTICS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. RK LOGISTICS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. RK LOGISTICS shall conduct a survey or interview all current and former aggrieved employees in California who worked for RK LOGISTICS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: 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 for mobile device usage; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. RK LOGISTICS shall pay Ms. Diaz and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. RK LOGISTICS also shall pay Ms. Diaz and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. RK LOGISTICS shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and 248.6(b)(3)(A).
6. RK LOGISTICS shall reimburse Ms. Diaz and all aggrieved employees who were required to pay for any business expenses incurred for RK LOGISTICS's benefit, including, but not limited to, costs of mobile device usage, as required by Labor Code section 2802.
7. RK LOGISTICS shall pay accrued legal interest to Ms. Diaz and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

8. RK LOGISTICS shall provide Ms. Diaz and all aggrieved employees employed by RK LOGISTICS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
9. RK LOGISTICS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. RK LOGISTICS shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. RK LOGISTICS 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 sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 9-2001, section 20.

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

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

Best Regards,



Ninel Kocharyan

Copy: THE RK LOGISTICS GROUP, INC. (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067



7022 2410 0000 2405 8085

THE RK LOGISTICS GROUP, INC
41707 CHRISTY STREET
FREMONT, CA 94538

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

THE RK LOGISTICS GROUP, INC.
41707 CHRISTY STREET
FREMONT, CA 94538

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent
X ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



9590 9402 7690 2122 7160 23

2. Article Number (Transfer from service label)

7022 2410 0000 2405 8085

- Service Type
- | | |
|--|--|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Restricted Delivery | |

PS Form 3811, July 2020 PSN 7530-02-000-8053

Domestic Return Receipt

7022 2410 0000 2405 8085

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

For delivery information, visit our website at www.usps.com

1. Certified Mail Fee \$
2. Additional Fees (Postage, Insurance, etc.) \$
3. Return Receipt (Postage) \$
4. Return Receipt (Insurance) \$
5. Certified Mail Restricted Delivery \$

THE RK LOGISTICS GROUP, INC.
41707 CHRISTY STREET
FREMONT, CA 94538

PS Form 3811, July 2020 PSN 7530-02-000-8053

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

THE RK LOGISTICS GROUP, INC.
41707 CHRISTY STREET
FREMONT, CA 94538



9590 9402 7690 2122 7160 23

2. Article Number (Transfer from service label)

7022 2410 0000 2405 8085

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

RK Logistics

C. Date of Delivery

8-17-23

- D. Is delivery address different from Item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |

Restricted Delivery

Domestic Return Receipt