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County of Santa Clara,  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF SANTA CLARA**

GEORGE CELESTINO and CYNTHIA  
CUAHUTLE, individually, and on behalf of  
aggrieved employees pursuant to the Private  
Attorneys General Act (“PAGA”);

Plaintiffs,

v.

ACCURATE COURIER NCA, LLC D/B/A  
ACCURATE COURIER SERVICES, a  
California corporation, and DOES 1 through  
100, inclusive;

Defendant.

Case No.: 23CV411121

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES FOR VIOLATION  
OF LABOR CODE § 2698 *et seq.*  
(PRIVATE ATTORNEYS GENERAL  
ACT OF 2004)**

1 Plaintiffs George Celestino and Cynthia Cuahutle (“Plaintiffs”) hereby submit their First  
2 Amended Complaint against Defendant Accurate Courier NCA, LLC D/B/A Accurate Courier  
3 Services, and DOES 1 through 100, inclusive; (collectively, “Defendants”), on behalf of  
4 themselves and other current and former aggrieved employees of Defendants for penalties as  
5 follows:

### 6 **INTRODUCTION**

7 **1.** This representative action brought pursuant to Labor Code § 2698 *et seq.* (the  
8 Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code §§  
9 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,  
10 1197.1, 1198, 2800 and 2802.

11 **2.** This Complaint challenges Defendants’ systemic illegal employment practices  
12 resulting in violations of the stated provisions of the Labor Code against the identified group of  
13 employees.

14 **3.** Plaintiffs are informed and believe and thereon allege that Defendants jointly and  
15 severally acted intentionally and with deliberate indifference and conscious disregard to the  
16 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)  
17 failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide  
18 accurate wage statements, (4) failing to pay all wages due and owing during employment and  
19 upon termination of employment, (5) failing to reimburse all necessary business expenses, and  
20 (6) failing to timely provide employee records upon request.

### 21 **JURISDICTION AND VENUE**

22 **4.** This action is brought pursuant to PAGA. The civil penalties sought by Plaintiffs  
23 exceed the minimal jurisdiction limits of the Superior Court and will be established according to  
24 proof at trial.

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5. This Court has jurisdiction over this action pursuant to California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

**6.** This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county. Moreover, this action is brought on behalf of the State of California as a private attorney general and has jurisdiction in this venue.

**PARTIES**

**9.** Plaintiffs George Celestino and Cynthia Cuahutle are individuals residing in the State of California. Plaintiffs are former employees of Defendants and suffered one or more labor violations from Defendants within the statutory time period.

**10.** Plaintiffs are informed and believe and thereon allege that Defendants are licensed to do business and actually doing business in the State of California, including the County of Santa Clara.

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1       **11.**     Plaintiffs does not know the true names or capacities, whether individual, partner  
2 or corporate, of Defendants sued herein as DOES 1 through 100, inclusive, and for that reason,  
3 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend the  
4 complaint when the true names and capacities are known. Plaintiffs are informed and believe  
5 and thereon allege that each of Defendants designated as a DOE was responsible in some way  
6 for the matters alleged herein and proximately caused Plaintiff and other current and former  
7 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries  
8 complained of herein.

9       **12.**     At all times herein mentioned, Defendants, and each of them, were agents,  
10 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-  
11 conspirators and assigns, each of the other, and at all times relevant hereto were acting within  
12 the course and scope of their authority as such agents, partners, joint venturers, representatives,  
13 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions  
14 alleged herein were duly committed with ratification, knowledge, permission, encouragement,  
15 authorization and consent of each Defendant designated herein.

16       **13.**     As such, and based upon all the facts and circumstances incident to Defendants'  
17 business in California, Defendants are subject to PAGA and Labor Code §§ 201, 202, 203, 204,  
18 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800  
19 and 2802.

20                               **CAUSE OF ACTION**

21                               **VIOLATION OF PAGA**

22                               **(AGAINST ALL DEFENDANTS BY PLAINTIFFS)**

23       **14.**     Plaintiffs re-allege and incorporate by reference paragraphs 1 through 13 as  
24 though fully set forth herein.

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26     ///

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1       **15.**     PAGA expressly establishes that any provision of the California Labor Code  
2 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its  
3 departments, divisions, commissions, boards, agencies or employees for a violation of the  
4 California Labor Code, may be recovered through a civil action brought by an aggrieved  
5 employee on behalf of himself or herself, and other current or former employees.

6       **16.**     On February 15, 2023, Plaintiff George Celestino provided written notice to the  
7 LWDA and Defendants of the specific provisions of the Labor Code he contends were violated,  
8 and the theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by  
9 reference is a copy of the written notice to the LWDA. Plaintiffs believe that on or about April  
10 21, 2023, the sixty-five (65) day notice period expired, and the LWDA did not take any action  
11 to investigate or prosecute this matter. Therefore, Plaintiff Celestino has exhausted his  
12 administrative remedies.

13       **17.**     On July 3, 2023, Plaintiff Cynthia Cuahutle provided written notice to the LWDA  
14 and Defendants of the specific provisions of the Labor Code she contends were violated, and the  
15 theories supporting her contentions. Attached hereto as **Exhibit 2** and incorporated by reference  
16 is a copy of the written notice to the LWDA. Plaintiffs believe that on or about September 6,  
17 2023, the sixty-five (65) days' notice period will expire as to all Defendants, and Plaintiffs will  
18 amend the complaint to plead exhaustion.

19       **18.**     Plaintiffs and the other hourly-paid or non-exempt employees are "aggrieved  
20 employees" as defined by California Labor Code § 2699(c) in that they are all current or former  
21 hourly-paid or non-exempt employees of Defendants and one or more of the alleged violations  
22 was committed against them during the period from February 15, 2022 to the present.

23                   **Failure to Pay Minimum and Overtime Wages**

24       **19.**     At all times relevant herein, Defendants were required to compensate their non-  
25 exempt employees minimum wages for all hours worked and overtime wages for all hours  
26 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the  
27 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

28     ///

1       **20.**     As a policy and practice, Defendants failed to compensate Plaintiffs and other  
2 aggrieved current and former employees for all hours worked, resulting in a failure to pay all  
3 minimum wages and overtime wages, where applicable.

4                     **Failure to Provide Meal Periods and Rest Breaks**

5       **21.**     In accordance with the mandates of Labor Code §§ 226.7 and 512, Defendants  
6 were required to authorize and permit their non-exempt employees to take a 10-minute rest break  
7 for every four (4) hours worked or major fraction thereof, and were further required to provide  
8 their non-exempt employees with a 30-minute meal period for every five (5) hours worked.

9       **22.**     As a policy and practice, Defendants failed to provide Plaintiffs and other  
10 aggrieved current and former employees with legally-mandated meal periods and rest breaks and  
11 failed to pay proper compensation for this failure.

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

13       **23.**     At all times relevant herein, Defendants were required to pay their employees  
14 within a specified time period pursuant to the mandate of Labor Code § 204.

15       **24.**     As a policy and practice, Defendants failed to pay Plaintiffs and other aggrieved  
16 current and former employees all wages due and owing them within the required time period.

17                    **Failure to Timely Pay Wages Upon Termination**

18       **25.**     At all times relevant herein, Defendants were required to pay their employees all  
19 wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§  
20 201 to 204.

21       **26.**     As a result of Defendants' Labor Code violations alleged above, Defendants  
22 failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to  
23 Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code  
24 § 203.

25                    **Failure to Provide Complete and Accurate Wage Statements**

26       **27.**     At all times relevant herein, Defendants were required to keep *accurate* records  
27 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

28     ///

1       **28.**     As a result of Defendants' various Labor Code violations, Defendants failed to  
2 keep accurate records regarding Plaintiff and other aggrieved current and former employees. For  
3 example, Defendants failed in their affirmative obligation to keep accurate records regarding  
4 Plaintiffs and other aggrieved current and former employees' gross wages earned, total hours  
5 worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours  
6 worked at each hourly rate.

7                               **Failure to Provide Paid Sick Days**

8       **29.**     At all times relevant herein, Defendants were required to provide their employees  
9 with paid sick days pursuant to Labor Code § 246.

10       **30.**    As a policy and practice, Defendants failed to provide Plaintiffs and other  
11 aggrieved current and former employees with paid sick days pursuant to Labor Code § 246.

12                           **Failure to Reimburse Business Expenses**

13       **31.**    At all times relevant herein, Defendants were required to reimburse their  
14 employees for any and all necessary expenditures or losses incurred by the employees in direct  
15 consequences of the discharge or their duties pursuant to the mandate of Labor Code §§ 2800  
16 and 2802.

17       **32.**    As a policy and practice, Defendants failed to pay Plaintiffs and other aggrieved  
18 current and former employees all business expenses incurred and owing them within the required  
19 time period.

20                           **Failure to Timely Produce Payroll Records and Personnel Files**

21       **33.**    At all times relevant herein, Defendants were required to produce their employees'  
22 payroll records upon an employee's request within 21 calendar days pursuant to Labor Code §§  
23 226(a) and (b). Moreover, Defendants were required to produce their employees' personnel files  
24 upon an employee's request within 30 calendar days pursuant to California Labor Code § 1198.5.

25       **34.**    As a policy and practice, Defendants failed to produce Plaintiffs' and the other  
26 aggrieved current and former employees with their payroll records within 21 calendar days  
27 pursuant to Labor Code §§ 226(a) and (b).

28     ///

**35.** As a policy and practice, Defendants failed to produce Plaintiffs' and the other aggrieved current and former employees with their personnel files within 30 calendar days pursuant to Labor Code § 1198.5.

## Penalties

**36.** Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on behalf of other current and former aggrieved employees, request and are entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, including but not limited to:

**37.** Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

**38.** Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

**39.** Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

**40.** Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

41. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

**42.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

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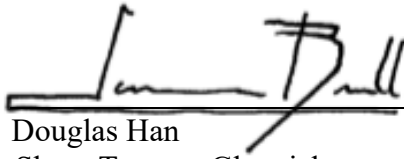
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on their own behalf as an individual and as representatives of  
3 other current and former aggrieved employees pursuant to PAGA, pray for judgment as follows:

- 4 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in  
5 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202,  
6 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,  
7 1197.1, 1198, 2800 and 2802.
- 8 2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code  
9 §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
- 10 3. For such other and further relief the court may deem just and proper.
- 11

12 Dated: July 26, 2023

**JUSTICE LAW CORPORATION**

13  
14 By: 

Douglas Han  
Shunt Tatavos-Gharajeh  
Lawrence W. Beall  
*Attorneys for Plaintiffs*

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# **EXHIBIT 1**

February 15, 2023

**BY U.S. EMAIL/ELECTRONIC SUBMISSION**

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

**Re: ACCURATE COURIER NCA LLC D/B/A ACCURATE COURIER SERVICES**

Dear Representative:

We have been retained to represent George Celestino against Accurate Courier NCA LLC d/b/a Accurate Courier Services (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20<sup>1</sup> for violations of California wage-and-hour laws (hereinafter collectively referred to as "ACN").

Mr. Celestino is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Celestino may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Accurate Courier NCA LLC d/b/a Accurate Courier Services is a California limited liability company located at 3437 Myrtle Ave. North Highlands, California 95660.

ACN employed Mr. Celestino as an hourly-paid non-exempt driver during the relevant time period in the State of California. ACN directly controlled the wages, hours and/or working conditions of Mr. Celestino and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

The "aggrieved employees" that Mr. Celestino may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of ACN within the State of California.

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<sup>1</sup> Mr. Celestino does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Celestino will amend this notice when the true names and capacities are known. Mr. Celestino is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Celestino and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

ACN failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Celestino has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at ACN, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

ACN has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a)-(c), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. ACN failed to compensate aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. ACN also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate 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. During the relevant time period, ACN failed to pay aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate 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.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, ACN routinely required aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with ACN's policies and expectations, and meet production quotas. ACN failed to provide coverage to aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, ACN also failed to authorize and permit aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, ACN failed to compensate aggrieved employees all the premium wages they were owed, including failing to pay premium wages at aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." ACN required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." ACN required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, ACN failed to pay aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

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. During the relevant time period, ACN failed to pay aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ACN did not provide aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ACN were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by aggrieved employees, (2) total hours worked by aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by aggrieved employees (4) all deductions for aggrieved employees, (5) net wages earned by aggrieved employees, (6) the inclusive dates of the period for which aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by aggrieved employees.

California Labor Code sections 226(b) and (c) requires an employer to produce an employee's payroll records upon request within 21 calendar days. California Labor Code section 1198.5 requires an employer to produce an employee's personnel file upon request within 30 calendar days. On December 12, 2022, and again on January 13, 2023, Mr. Celestino requested his payroll records and personnel file from ACN. ACN's deadlines to produce the requested documents were January 11, 2023, and February 12, 2023, respectively. To date, ACN has yet to produce Mr. Celestino's payroll records and personnel file.

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California Labor Code section 558 allows recovery of penalties. (a) Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, ACN failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ACN did not provide aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ACN, including for purchasing tools and equipment they were required to use and wear while working.

We believe that Mr. Celestino and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a)-(b), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Celestino will seek these penalties on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of ACN within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

**JUSTICE LAW CORPORATION**

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

**CC: (By Certified U.S. Mail Only):**

VCorp Services CA, Inc.  
c/o Accurate Courier NCA LLC d/b/a Accurate Courier Services  
330 N. Brand Blvd., Suite 700  
Glendale, California 91203  
*Agent for Service of Process for* Accurate Courier NCA LLC d/b/a Accurate Courier Services

# **EXHIBIT 2**

July 3, 2023

**BY U.S. EMAIL/ELECTRONIC SUBMISSION**

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

**Re: ACCURATE COURIER NCA LLC D/B/A ACCURATE COURIER SERVICES**

Dear Representative:

We have been retained to represent Cynthia Cuahutle against Accurate Courier NCA LLC d/b/a Accurate Courier Services including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20<sup>1</sup> for violations of California wage-and-hour laws (hereinafter collectively referred to as "ACCURATE COURIER").

Ms. Cuahutle is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Cuahutle may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Accurate Courier NCA, LLC d/b/a Accurate Courier Services is a California limited liability company located at 3437 Myrtle Ave., Ste 420, North Highlands, California 95660.

ACCURATE COURIER employed Ms. Cuahutle as an hourly-paid non-exempt Medical Courier member within one year of the date of this letter (until in or about January of 2023) in the State of California. ACCURATE COURIER directly controlled the wages, hours and/or working conditions of Ms. Cuahutle and other aggrieved employees' employment, including direction, retention, scheduling, supervision, and termination.

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<sup>1</sup> Ms. Cuahutle does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Cuahutle will amend this notice when the true names and capacities are known. Ms. Cuahutle is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Cuahutle and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

The “aggrieved employees” that Ms. Cuahutle may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of ACCURATE COURIER within the State of California.

ACCURATE COURIER failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Cuahutle has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at ACCURATE COURIER, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

ACCURATE COURIER has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Cuahutle and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. ACCURATE COURIER failed to compensate Ms. Cuahutle and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, and during meal breaks. ACCURATE COURIER also failed to include non-discretionary bonuses and incentives in Ms. Cuahutle and other aggrieved employees’ regular rate of pay for purposes of overtime compensation. Therefore, Ms. Cuahutle and aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, ACCURATE COURIER did not provide Ms. Cuahutle and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, and during meal breaks.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate 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. During the relevant time period, ACCURATE COURIER failed to pay Ms. Cuahutle and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate 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.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, ACCURATE COURIER routinely required Ms. Cuahutle and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with ACCURATE COURIER's policies and expectations, and meet production quotas. ACCURATE COURIER failed to provide coverage to Ms. Cuahutle and other aggrieved employees so they may be relieved of all work duties and take legally mandated meal and rest breaks. Lastly, ACCURATE COURIER also failed to authorize and permit Ms. Cuahutle and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, ACCURATE COURIER failed to compensate Ms. Cuahutle and other aggrieved employees all the premium wages they were owed, including failing to pay premium wages at aggrieved employees' regular rate of pay.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." ACCURATE COURIER required aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 432.5 states “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” ACCURATE COURIER required aggrieved employees to execute arbitration agreements as a condition of employment despite knowing that such agreements are prohibited under Labor Code section 432.6.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, ACCURATE COURIER failed to pay Ms. Cuahutle and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code sections 203 and 210.

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. During the relevant time period, ACCURATE COURIER failed to pay Ms. Cuahutle and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code sections 204 and 210.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, ACCURATE COURIER did not provide Ms. Cuahutle and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from ACCURATE COURIER were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Cuahutle and other aggrieved employees, (2) total hours worked by Ms. Cuahutle and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Cuahutle and other aggrieved employees (4) all deductions for Ms. Cuahutle and other aggrieved employees, (5) net wages earned by Ms. Cuahutle and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Cuahutle and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Cuahutle and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Cuahutle and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, ACCURATE COURIER failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Cuahutle and other aggrieved employees.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Cuahutle and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by ACCURATE COURIER, including for purchasing equipment and uniforms they were required to use and wear while working, and using their personal cellular phones and vehicles for worked related purposes.

We believe that Ms. Cuahutle and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Cuahutle will seek these penalties on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of ACCURATE COURIER within one year of the date of this letter, as allowed by law.

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LWDA  
July 3, 2023  
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If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

**JUSTICE LAW CORPORATION**

A handwritten signature in black ink, appearing to read 'D. Han', with a long horizontal stroke extending to the right.

Douglas Han, Esq.

**CC: (By Certified U.S. Mail Only):**

Legal Department  
c/o Accurate Courier NCA LLCA d/b/a Accurate Courier Services  
3437 Myrtle Ave.  
North Highlands, California 95660

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2 **PROOF OF SERVICE**  
3 **1013A(3) CCP**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18  
6 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101  
Pasadena, California 91103.

7 On July 26, 2023, I served the foregoing document described as

8 **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF**  
9 **LABOR CODE § 2698 et seq. (PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

10 on interested parties in this action by placing a true and correct copy thereof enclosed in a sealed  
11 envelope addressed as follows:

12 Alan S. Vertun ([avertun@hotmail.com](mailto:avertun@hotmail.com))

13 **ALAN S VERTUN APLC**

14 Beverly Hills Law Building

424 S. Beverly Drive,

Beverly Hills, CA 90212

15 *Attorney(s) for Defendant Accurate Courier NCA LLC*

16 **[X] BY U.S. MAIL**

17 As follows: I am “readily familiar” with the firm’s practice of collection and processing  
18 correspondence for mailing. Under that practice, it would be deposited with the U.S.  
Postal Service on that day with postage thereon fully prepaid at Pasadena, California in  
19 the ordinary course of business. I am aware that on motion of the party served, service is  
presumed invalid if the postal cancellation date or postage meter date is more than one  
20 day after the date of deposit for mailing an affidavit.

21 **[X] STATE**

22 I declare under penalty of perjury under the laws of the State of California that the above  
is true and correct.

23 Executed on July 26, 2023, at Pasadena, California.

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26 Christina Castro

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**PROOF OF SERVICE**  
**1013A(3) CCP**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is ccastro@justicelawcorp.com.

On July 26, 23, I served the foregoing document described as

**COMPLAINT FOR PENALTIES FOR VIOLATION OF LABOR CODE § 2698 et seq.**  
**(PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

for the following case: **Cuahutle v. Accurate Courier NCA, LLC d/b/a**  
**Accurate Courier Services**  
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-965980-23**  
**Court Case No.: 23CV411121**  
**Santa Clara County Superior Court**

on interested parties in this action by electronically submitting as follows:

**State of California**  
**Labor & Workforce Development Agency**  
**800 Capitol Mall, MIC-55**  
**Sacramento, California 95814**

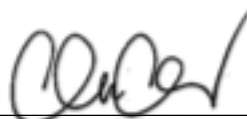
**[X] BY ELECTRONIC SUBMISSION**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

**[X] STATE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2023, at Pasadena, California.



Christina Castro