Capstone LAW APC

1875 Century Park East, Suite 1860
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

February 26, 2026

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/411)

Subject: *Gerardo Cruz v. Updike Distribution Logistics, LLC*

Dear PAGA Administrator:

This office represents Gerardo Cruz in connection with his claims under the California Labor Code. Mr. Cruz was an employee of UPDIKE DISTRIBUTION LOGISTICS, LLC ("UPDIKE").

The employer may be contacted directly at the address below:

UPDIKE DISTRIBUTION LOGISTICS, LLC
435 SOUTH 59TH AVENUE, STE 100
PHOENIX, AZ 85043

Mr. Cruz intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Cruz seeks relief on behalf of himself, the State of California, and other persons who work or worked for UPDIKE as delivery drivers and who were misclassified as independent contractors in California ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

UPDIKE employed Mr. Cruz from approximately February 2021 to July 2025. Mr. Cruz worked as a Delivery Driver for UPDIKE out of its warehouse in Redlands, California located at (26759 Almond Avenue, Suite 100, Redlands, California 92374). During his employment, Mr. Cruz typically worked seven (7) to ten (10) hours or more per day, and five (5) days per week. By the end of his employment, Mr. Cruz was compensated approximately $575-$675 per day. His job duties included, without limitation, operating a 24-foot box truck, loading inventory, driving to delivery locations, completing deliveries, and assembling furniture.

UPDIKE committed each of the following Labor Code violations against Mr. Cruz, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

UPDIKE's Company-Wide and Uniform Treatment and Practice of Misclassifying Delivery Drivers as Independent Contractors

UPDIKE DISTRIBUTION LOGISTICS, LLC is a Delaware limited liability company and provides logistics services such as public and shared warehousing, contract and dedicated warehousing, e-commerce fulfillment, and transportation, with at least five (5) warehouse locations across California. Upon information and belief, UPDIKE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Phoenix, Arizona, which is responsible for communicating and implementing UPDIKE's company-wide policies to delivery driver employees misclassified as independent contractors throughout California. UPDIKE continues to employ delivery drivers at various locations throughout California and continues to misclassify these employees as independent contractors.

UPDIKE contracts with drivers, such as Mr. Cruz and other aggrieved employees, to provide delivery services to UPDIKE's customers. As a delivery driver, Mr. Cruz made deliveries of inventory for UPDIKE's clients, including, but not limited to: delivering inventory such as store displays and fixtures for retailers like Sephora, Hollister, and Abercrombie to other warehouses; completing residential deliveries of furniture for Wayfair; and performing residential deliveries of large home appliances for Whirlpool. Although Mr. Cruz and other aggrieved employees were uniformly classified by UPDIKE as "independent contractors," UPDIKE exercised extensive control over the manner, means, and conditions under which Mr. Cruz and other aggrieved employees performed their work, and has engaged in a scheme to create the façade that they do not employ delivery drivers to evade California's wage-and-hour protections for employees.

For example, UPDIKE's supervisors texted Mr. Cruz and other aggrieved employees their start-times for reporting to the warehouse(s) to load merchandise, as well as the specific delivery route that Mr. Cruz and other aggrieved employees were to follow for completing deliveries. Mr. Cruz and other aggrieved employees were required to report to UPDIKE's warehouse(s) at the time designated by UPDIKE's supervisors. Thus, Mr. Cruz and other aggrieved employees did not have the ability to choose their own work start-times, set their delivery schedule, or select the geographic area of their routes. Moreover, Mr. Cruz and other aggrieved employees had no meaningful ability to negotiate or alter their assigned routes, which frequently required them to drive long distances across Southern California. Additionally, UPDIKE required Mr. Cruz and other aggrieved employees to download, use, and comply with a delivery-monitoring mobile application called "Dispatch Track." Dispatch Track indicated Mr. Cruz's and other aggrieved employees' routes, delivery windows, customer information, and the complete list of items to be delivered. Dispatch Track also included GPS tracking, which allowed UPDIKE to monitor Mr. Cruz's and other aggrieved employees' movements and progress throughout the day. Mr. Cruz could be reprimanded for failing to perform deliveries strictly within UPDIKE's designated delivery windows. UPDIKE also required Mr. Cruz and other aggrieved employees to take photographs of the completed

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

delivery, obtain the customer's signature, and click "Finish" in the application, before they were permitted to drive to the next location.

As a further example, UPDIKE also required Mr. Cruz and other aggrieved employees to attend mandatory in-person meetings at its warehouse(s) to discuss delivery procedures, required mobile applications for work, and client-specific protocols. These meetings were conducted and led by UPDIKE's managers and supervisors. UPDIKE also required the use of specific tools, such as boot covers, shoulder straps for moving large items, and four-wheel dollies for transporting oversized products. UPDIKE also directed Mr. Cruz and other aggrieved employees to wear only black-colored clothing and not to wear any logos of other companies on their clothing while working for UPDIKE.

Thus, Mr. Cruz and other aggrieved employees were not free from the control and direction of UPDIKE in connection with the performance of their work. Moreover, Mr. Cruz and other aggrieved employees performed work that was not outside the usual course of UPDIKE's business, which is transportation services. Also, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates. Mr. Cruz was paid a higher flat rate per day if he completed more than six (6) deliveries on his route and, if Mr. Cruz completed fewer than six (6) deliveries, he was paid a lower flat rate per day. The day rate did not vary based on the number of hours worked and was determined solely by the number of deliveries assigned by UPDIKE. Mr. Cruz and other aggrieved employees had no ability to negotiate this rate of pay. Further, UPDIKE required Mr. Cruz and other aggrieved employees to pay for business expenses including fuel, insurance, costs of their mobile devices and mobile data usage, equipment, and vehicle maintenance; these expenses totaled hundreds of dollars each week.

Therefore, UPDIKE exercised substantial control over Mr. Cruz's and other aggrieved employees' wages, hours, and working conditions. UPDIKE's uniform misclassification of Mr. Cruz and other delivery drivers as independent contractors is intentional, unjustified, and unlawful. Because Mr. Cruz and other aggrieved employees rely (often exclusively) on the income they earn from UPDIKE to support themselves and their families, the economic reality is that Mr. Cruz and other aggrieved employees are UPDIKE's employees. Pursuant to California Labor Code section 3357, Mr. Cruz and other aggrieved employees are entitled to a presumption that they are in fact employees of UPDIKE. Moreover, the existence of any document purporting to create an independent contractor relationship is not determinative.

As a result of this misclassification, UPDIKE has violated numerous wage-and-hour provisions, including, but not limited to, failing to pay overtime wages for all overtime hours worked, failing to pay at least minimum wages for all hours worked, failing to provide meal and rest periods, and failing to provide reimbursement for necessary business-related expenses, among others.

<u>Violation of California Labor Code §§ 226.8(a) and 2775(b) – Willful Misclassification</u>

At all relevant times herein, Labor Code section 2775(b) provides the test for determining whether an individual performing work for another is an independent contractor or an employee, a standard commonly referred to as the "ABC Test." It states, as follows:

> [A] person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied.
> **(A)** The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

> **(B)** The person performs work that is outside the usual course of the hiring entity's business.
> **(C)** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work.

Under the ABC Test, the alleged employer, rather than the worker, has the burden of establishing that the worker is an independent contractor and not intended to be included within the relevant wage order's coverage. "The focus is not on the label attached to a worker's position, but on how that individual's job may reasonably be viewed." *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1154–1155 (2019). Further, the alleged employer must establish that the worker meets ***all three*** factors of the ABC Test or falls within an exception to the ABC Test. *Id.* at 1154 ("The ABC test is conjunctive, and the hiring entity's failure to establish any of the following three factors precludes a finding that the worker is an independent contractor . . . ."). Otherwise, Labor Code section 2775's default presumption applies and the worker must be treated as an employee. *See Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 955 (2018) ("The ABC test presumptively considers all workers to be employees, and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies each of three conditions . . . .").

Here, at all relevant times herein, UPDIKE treated Mr. Cruz and other aggrieved employees as independent contractors despite the fact that UPDIKE failed to meet any of the prongs of the ABC Test, much less all three.

First, UPDIKE retained the right to control the manner and method of how Mr. Cruz and other aggrieved employees performed their job duties, and UPDIKE retained all necessary control over Mr. Cruz and other aggrieved employees during their employment. Among other things, as stated, Mr. Cruz and other aggrieved employees were required to follow detailed requirements imposed by UPDIKE governing the performance of their job. Furthermore, as stated, UPDIKE set their compensation.

Second, the job duties performed by Mr. Cruz and other aggrieved employees fell within UPDIKE's usual course of business. Specifically, as stated, the roles performed by Mr. Cruz and other aggrieved employees are clearly comparable to those of UPDIKE's employees whose services are provided within the usual course of UPDIKE's business of delivering goods. Thus, the work of Mr. Cruz and other aggrieved employees was not merely incidental to UPDIKE's business, but rather, was an integral and ordinary part of that business.

Third, Mr. Cruz and other aggrieved employees were not engaged in an independently established trade, occupation, or business of the same nature as the work performed for UPDIKE. Mr. Cruz and other aggrieved employees did not, for example, take any of the usual steps to establish and promote their businesses. Nor did Mr. Cruz and other aggrieved employees—through incorporation, licensure, advertisements, or routine offerings to provide services to the public or to a number of potential customers—independently choose the burdens and benefits of self-employment by engaging in an independently established trade, occupation, or business. Most importantly, this last prong of the ABC Test requires that UPDIKE show Mr. Cruz and other aggrieved employees "*actually . . . engaged* in an independent business, *not merely that [they] could be.*" *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal.App.5th 1131, 1155 (2019) (emphasis in original). For example, Mr. Cruz did not actually engage in independently established businesses. "A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order." *Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903, 962 (2018). Here, UPDIKE violated California law by attempting to do so.

At all times relevant herein set forth, California Labor Code section 226.8 makes it illegal to willfully misclassify an employee as an independent contractor, providing:

> [i]t is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor. (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

California Labor Code section 226.8(b) further provides that "[i]f the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars ($5,000) and not more than fifteen thousand dollars ($15,000) for each violation, in addition to any other penalties or fines permitted by law."

Moreover, California Labor Code section 226.8(c) provides "[i]f the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars ($25,000) for each violation, in addition to any other penalties or fines permitted by law."

Here, UPDIKE's treatment of Mr. Cruz and other aggrieved employees cannot meet any part of the ABC Test and UPDIKE was aware of this. This treatment was UPDIKE's pattern and practice of willfully misclassifying UPDIKE's employees as independent contractors. Thus, UPDIKE intentionally and willfully misclassified Mr. Cruz and other aggrieved employees as independent contractors, in violation of Labor Code section 226.8(a). Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 226.8(a) and 2775(b), pursuant to Labor Code sections 226.8, 2786, and/or 2699(a), (f), and (k).

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.

UPDIKE willfully failed to pay all overtime wages owed to Mr. Cruz and other aggrieved employees. During the relevant time period, Mr. Cruz 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 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.

As set forth above, UPDIKE's misclassification of Mr. Cruz and other aggrieved employees as independent contractors and "exempt" status from overtime and other related wage-and-hour protections, including meal and rest periods, is, and was, willful, intentional, unjustified, and unlawful. Mr. Cruz and other aggrieved employees typically worked forty (40) to sixty (60) hours per week and more than ten (10) hours per day, of which UPDIKE were fully aware. However, because UPDIKE misclassified Mr. Cruz and other aggrieved employees as "exempt" from overtime, UPDIKE did not record their hours worked and did not pay any overtime wages for hours worked in excess of eight (8) hours in one day, twelve (12) hours in a day, or forty (40) hours in one week.

Mr. Cruz regularly worked in excess of eight (8) hours in one day, twelve (12) hours in a day, and forty (40) hours in one week, and were never paid overtime wages. For example, as a delivery driver, Mr. Cruz spent time loading inventory onto trucks, driving to several delivery locations, completing deliveries for UPDIKE's clients, communicating with UPDIKE's managers regarding the status of deliveries, and assembling furniture for UPDIKE's clients, regularly driving from UPDIKE's warehouse in Redlands to distant locations such as Santa Barbara, Santa Clarita, and Barstow, often totaling 100-200 miles and working up to 14 hours per day. However, as stated, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates, which did not vary based on the number of hours worked and which were determined solely by the number of deliveries assigned by UPDIKE. As a result of UPDIKE's willful misclassification of Mr. Cruz and other aggrieved employees, Mr. Cruz and other aggrieved employees were denied overtime pay.

Additionally, Mr. Cruz and other aggrieved employees were required to review text message communications from UPDIKE's management after their shifts or on their days off. For example, at the end of each day, Mr. Cruz would receive a text message from UPDIKE's managers with his work schedules, the assigned delivery routes for the following work day, and other work-related announcements, and Mr. Cruz was required to spend time off-the-clock reviewing the text messages. As a further example, as stated, UPDIKE also required Mr. Cruz and other aggrieved employees to attend mandatory in-person meetings at its warehouse(s) to discuss delivery procedures, required mobile applications, and client-specific protocols, which could take from 1-3 hours per instance.

Because UPDIKE misclassified Mr. Cruz and other aggrieved employees as "exempt," UPDIKE also failed to provide Mr. Cruz and other aggrieved employees with meal periods and instead required that they perform work during unpaid meal periods. Because Mr. Cruz and other aggrieved employees typically worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, most, if not all unpaid time worked during meal periods qualified for overtime premium pay.

UPDIKE knew or should have known that as a result of these company-wide practices and/or policies, including its misclassification of independent contractors such as Mr. Cruz and other aggrieved employees as "exempt," Mr. Cruz and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Cruz 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, Mr. Cruz and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in 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 for the employer, whether or not required to do so." Cal. Code Regs. Tit. 8, § 11090(2)(H) (defining "Hours Worked").

As set forth above, due to UPDIKE's policies and/or practices of willful misclassification of Delivery Drivers, UPDIKE failed to track this time that Mr. Cruz and other aggrieved employees spent working off-the-clock, and Mr. Cruz and other aggrieved employees received no compensation for this time. As stated, Mr. Cruz and other aggrieved employees spent time loading inventory, driving to several distant delivery locations, completing deliveries, communicating with UPDIKE's managers, assembling furniture, reviewing text message communications from UPDIKE's management after their shifts or on their days off, and attending mandatory in-person meetings on UPDIKE's premises. However, as stated, UPDIKE paid Mr. Cruz and other aggrieved employees non-negotiable day rates, which did not vary based on the number of hours worked and which were determined solely by the number of deliveries assigned by UPDIKE. Mr. Cruz and other aggrieved employees were misclassified as independent contractors and thus not paid any hourly wage. Thus, Mr. Cruz and other aggrieved employees were not paid even minimum wage for all of the hours they worked as a result of being paid on a fixed-rate basis, and the wages paid to them were not sufficient to compensate them for all hours they worked at a minimum wage rate on a cumulative basis, in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

Additionally, UPDIKE has no policies in place for the provision of meal periods and did not authorize and permit Mr. Cruz and other aggrieved employees to take uninterrupted, duty-free meal periods. To the extent UPDIKE deducted time for meal periods which Mr. Cruz and other aggrieved employees did not receive, they were not paid for all hours worked. Thus, UPDIKE failed to pay Mr. Cruz and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

UPDIKE did not pay minimum wages for all hours worked by Mr. Cruz and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, UPDIKE 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, UPDIKE regularly failed to pay at least minimum wages to Mr. Cruz and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

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

As stated, during the relevant time period, UPDIKE systematically (and improperly) classified Mr. Cruz and other aggrieved employees as independent contractors and, on that basis, did not provide them with meal periods and did not take any measures to relieve them of their duties to take compliant meal periods. Moreover, on information and belief, UPDIKE had, and continues to have, a company-wide policy and/or practice of assigning its delivery drivers multiple, time-sensitive deliveries, located across various geographical distances and locations, without building in sufficient time to allow for 30-minute meal periods, which prevented Mr. Cruz and other aggrieved employees from taking all uninterrupted 30-minute meal periods, and forced them to work through their meal periods to complete their assigned deliveries. Moreover, UPDIKE wholly failed to schedule meal periods, which further caused Mr. Cruz and other aggrieved employees to not be relieved of their duties for compliant meal periods. Further, travel time between UPDIKE's clients' delivery locations could take longer than anticipated due to traffic conditions, which further impeded Mr. Cruz and other aggrieved employees from taking compliant meal periods.

As a result, Mr. Cruz and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Mr. Cruz was sometimes required to completely forgo his meal periods due to UPDIKE's willful misclassification of delivery drivers as independent contractors, delivery scheduling policies and practices, and failure to schedule meal periods at all.

Additionally, UPDIKE did not provide Mr. Cruz and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During the relevant time period, Mr. Cruz worked shifts in excess of 10 hours in one day and did not take a second meal period during those shifts. Mr. Cruz 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, UPDIKE knew or should have known that, because it had misclassified Mr. Cruz and other aggrieved employees as "exempt" and for the reasons stated above, Mr. Cruz and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. UPDIKE further knew or should have known that it did not pay Mr. Cruz and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

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

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

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

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

During the relevant time period, UPDIKE regularly failed to authorize and permit Mr. Cruz and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof.

UPDIKE's company-wide practices, including systemic misclassification, prevented Mr. Cruz and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, as with meal periods, UPDIKE's company-wide scheduling policies and practices of assigning its delivery drivers multiple, time-sensitive deliveries across various geographical distances and locations, prevented Mr. Cruz and other aggrieved employees from being able to take rest periods. UPDIKE also wholly failed to schedule rest periods, which further led to Mr. Cruz and other aggrieved employees not being authorized and permitted to take rest periods.

As a result of UPDIKE's practices and policies, Mr. Cruz 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, Mr. Cruz sometimes had to forgo his rest periods during his employment, due to UPDIKE's willful misclassification of delivery drivers as independent contractors, delivery scheduling policies and practices, and failure to schedule rest periods.

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

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

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

During the relevant time period, UPDIKE has knowingly and intentionally failed to provide Mr. Cruz and other aggrieved employees with any wage statements. UPDIKE did not provide Mr. Cruz and other aggrieved employees with itemized wage statements as a result of misclassifying them as independent contractors and denying their status as employees. Because UPDIKE did not issue any wage statements to Mr. Cruz and other aggrieved employees, UPDIKE has violated and continues to violate Labor Code section 226(a) in its entirety.

Specifically, UPDIKE has knowingly and intentionally failed to provide wage statements to Mr. Cruz and other aggrieved employees wage statements that list: gross wages earned in violation of section 226(a)(1); total hours worked in violation of section 226(a)(2); the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis in violation of section 226(a)(3); all deductions in violation of section 226(a)(4); the inclusive dates of the period for which aggrieved employees were paid in violation of section 226(a)(6); 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 in violation of section 226(a)(7); the name and address of the legal entity that is the employer in violation of section 226(a)(8); and all and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9). In addition, UPDIKE failed to provide Mr. Cruz and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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

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, UPDIKE engaged in company-wide practices and/or policies of failing to record any hours worked or keep records of meal periods as a result of misclassifying Mr. Curz and other aggrieved employees as independent contractors, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Cruz and other aggrieved employees, in violation of section 1198. Also, in light of UPDIKE's failure to provide Mr. Cruz and other aggrieved employees with second 30-minute meal periods to which they were entitled, UPDIKE kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

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

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

During the relevant time period, on information and belief, UPDIKE had a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Cruz voluntarily resigned from his employment with UPDIKE on or about July 31, 2025. However, UPDIKE did not provide him with his final pay until August 7, 2025, or later. Thus, UPDIKE failed to pay Mr. Cruz his final wages within seventy-two (72) hours of his leaving UPDIKE's employ, in violation of California Labor Code section 202.

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

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

Violation of California Labor Code §§ 246(b)(4) and 246(i) – Failure To Provide Sick Leave Benefits and 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. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. California 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.

During the relevant time period, on information and belief, UPDIKE systematically failed to provide Mr. Cruz and other aggrieved employees paid sick leave of no less than 40 hours or five (5) days. Specifically, Mr. Cruz worked in excess of 30 days for Defendants in California and was therefore eligible to receive paid sick leave. However, on information and belief, Defendants failed to provide Mr. Cruz and other aggrieved employees with any sick leave benefits, in violation of Labor Code section 246(b)(1)-(4).

Additionally, during the relevant time period, UPDIKE failed, on a company-wide basis, to provide Mr. Cruz and other aggrieved employees with written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. UPDIKE's systematic failure to provide written notice of sick leave benefits to Mr. Cruz and other aggrieved employees is in violation of Labor Code section 246(i).

Mr. Cruz and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring UPDIKE into compliance with Labor Code section 246, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, UPDIKE, on a company-wide basis, required that Mr. Cruz and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, as set forth above, UPDIKE required Mr. Cruz to download various mobile applications, such as "Dispatch Track" for displaying routes, delivery windows, and customer information, as well as allowing UPDIKE to actively monitor Mr. Cruz's and other aggrieved employees' movements and progress throughout the day. As another example, Mr. Cruz was required to use his personal cellular phone for communicating with UPDIKE's managers regarding work-related matters. Although UPDIKE required Mr. Cruz and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, UPDIKE failed to reimburse them for these costs.

Second, during the relevant time period, UPDIKE had a company-wide policy of requiring Mr. Cruz and other aggrieved employees to utilize their own personal delivery vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage, fuel, truck maintenance, and insurance premiums. Specifically, UPDIKE required Mr. Cruz and other aggrieved employees to travel to jobsites across Southern California to complete their assigned deliveries, but did not reimburse them for their travel expenses. For example, UPDIKE regularly required Mr. Cruz to drive his personal delivery vehicle from UPDIKE's warehouse in Redlands to distant locations such as Santa Barbara, Santa Clarita, and Barstow, often totaling 100-200 miles each day. Although UPDIKE required Mr. Cruz and other aggrieved employees to utilize their own delivery vehicles to carry out their work-related responsibilities, UPDIKE did not reimburse them for their travel expenses.

Third, during the relevant time period, UPDIKE required Mr. Cruz and other aggrieved employees to purchase supplies and equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Cruz was required to purchase his own dollies, pallet jacks, and drills for work purposes, because UPDIKE failed to provide him with the necessary supplies and equipment which were required for him to complete his assigned duties.

UPDIKE could have provided Mr. Cruz and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices, company vehicles, and supplies and equipment; or, UPDIKE could have fully reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, and supply and equipment expenses. Instead, UPDIKE passed these operating costs onto Mr. Cruz and other aggrieved employees. At all relevant times, Mr. Cruz did not earn at least two (2) times the minimum wage.

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

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

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

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

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

California Labor Code § 558(a)

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

Accordingly, Mr. Cruz seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Mr. Cruz, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against UPDIKE for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 226.8(a), 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2775(b), 2802, and 2810.5.

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

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

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1860
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Alexander Lima

Copy: UPDIKE DISTRIBUTION LOGISTICS, LLC (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1860
Los Angeles, CA 90067

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

9589 0710 5270 0211 5994 37

9589 0710 5270 0211 5994 37

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

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

OFFICIAL USE

Certified Mail Fee
$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified M
☐ Adult Sign
☐ Adult Sign
Postage
$
Total Posta
$
Sent To
Street and A
City, State,

Cruz v Updike Dist.

Postmark

UPDIKE DISTRIBUTION
LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

UPDIKE DISTRIBUTION
LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

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.

UPDIKE DISTRIBUTION
LOGISTICS, LLC
435 South 59th Avenue
Ste. #100
Phoenix, AZ 85043

9590 9402 9637 5199 8651 01

2. Article Number (Transfer from service label)
9589 0710 5270 0211 5994 37

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)
C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
Restricted Delivery
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt