

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

December 19, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Irma Huerta v. Captek Softgel International, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Irma Huerta (“Ms. Huerta”) in claims arising from her employment with Captek Softgel International, Inc. and Does 1 through 100 (“Defendants”). Ms. Huerta is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a manufacturing facility for vitamins, minerals, and supplements in Cerritos, California. Ms. Huerta was employed by Defendants as a non-exempt “General Worker” in their Inspection Department, from approximately 2007 until approximately June 2023. Ms. Huerta’s primary job duties included monitoring pill capsules as they were filled into bottles and then packaged for shipping.

During Ms. Huerta’s employment with Defendants, Defendants failed to compensate Ms. Huerta and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants’ supervisors frequently interrupted Ms. Huerta and other aggrieved employees during their meal periods with various work-related demands. In instances where their meal periods were interrupted for work purposes, Ms. Huerta and other aggrieved employees were not able to clock in before being required to complete these work demands. As a result, Defendants have failed to provide all duty-free meal periods, resulting in Ms. Huerta and other aggrieved employees performing off-the-clock work during their purported meal periods. *See Kaanaana v. Barrett Business Services, Inc.*

(2018) 29 Cal.App.5th 778, 808 (holding that requiring employees to work through any portion of meal period entitles them to payment for actual time worked as well as an additional hour of pay for the meal period premium).

Moreover, Defendants paid Ms. Huerta and other aggrieved employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including, but not limited to, bonuses and payments denoted as "Bonus" and "Gift" (hereinafter referred to collectively as "Incentive Pay"). However, despite paying Ms. Huerta and other aggrieved employees Incentive Pay, Defendants failed to properly incorporate the value of earned Incentive Pay when calculating the employees' respective regular rates of pay for overtime purposes, resulting in unpaid overtime wages.

Defendants failed to provide Ms. Huerta and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, uninterrupted, duty-free 30-minute meal periods before the fifth hour of work and *any* second duty-free, 30-minute meal periods when they worked shifts in excess of ten hours. Specifically, Ms. Huerta was frequently unable to take her meal period before the end of her fifth hour of work. Defendants required Ms. Huerta and other aggrieved employees to finish their job duties before they started their scheduled first meal periods, resulting in Ms. Huerta and other aggrieved employees frequently working approximately 30 minutes to one hour into their scheduled meal periods before they were provided a meal period. Moreover, Defendants' supervisors frequently interrupted Ms. Huerta and other aggrieved employees with work-related tasks during meal periods. Even when Ms. Huerta was permitted to take a meal period, such meal periods were often shorter than a "net" of 30-minutes as required by law for the same reasons discussed below pertaining to rest periods. Further, Defendants failed to schedule and provide any second meal periods, even though Ms. Huerta and other aggrieved employees worked shifts over ten hours on a daily basis. Moreover, when Defendants paid meal period premium payments (denoted on paystubs as "Missed Penalty"), they paid meal periods premiums at the employees' base hourly rate of pay, rather than at their respective regular rates of pay after incorporating the value of earned Incentive Pay. As a result, Ms. Huerta and other aggrieved employees did not receive an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Defendants regularly failed to authorize and permit Ms. Huerta and other aggrieved employees to take *any* duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants' unlawful rest period policies/practices. Moreover, Defendants failed to even *schedule* any rest periods for shifts over ten hours. As with meal periods, Defendants required Ms. Huerta and other non-exempt employees to finish their job duties before taking any breaks, thereby leaving Ms. Huerta and other aggrieved employees frequently unable to take rest periods. In the event Ms. Huerta and other aggrieved employees were able to take their rest periods, Defendants failed to authorize and permit rest periods for a "net" of 10 minutes. Under

California law, Defendants are required to authorize and permit a “net” rest period of 10-minutes that begins when the employee reaches a rest area away from his or her workstation and must be uninterrupted during the duration of the rest period. *See e.g.*, Division of Labor Standards Enforcement Manual (“DLSE Manual”) §45.3.3; *Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that “the rest period begins when the employee reaches an area away from the workstation that is appropriate for rest”); *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time”). Specifically, Defendants’ supervisors timed Ms. Huerta and other aggrieved employees’ rest periods to begin the moment they left their workstation, and Ms. Huerta and other non-exempt employees were required to return to their workstations by the completion of their 10-minute rest period. However, after leaving their workstations, Ms. Huerta and other aggrieved employees were required to walk approximately 2 minutes to the locker room to doff their protective gear, which included a gown, gloves and hat, and then walk an additional distance from the locker room to the breakroom. Ms. Huerta and other aggrieved employees were then required to walk back to the locker room to don their protective gear, then walk the approximately 2 minutes back to their workstations before the end of their rest period, thereby shortening their purported rest periods to less than 10 minutes in the designated rest area away from the employee’s workstation. Further, on occasions when Ms. Huerta and other aggrieved employees were not authorized and permitted to take all lawful rest periods to which they were entitled, Defendants failed to pay Ms. Huerta and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code section 226.7. Upon information and belief, Defendants failed to maintain pay codes for the payment of rest period premium payments as required by Labor Code section 226.7.

Defendants also failed to pay Ms. Huerta and other aggrieved employees all sick pay wages owed to them. Defendants’ policies and practices dictated that sick pay payments be made at an employee’s base rate of pay, as opposed to their regular rate of pay, as required by California law. Because Ms. Huerta and other aggrieved employees received Incentive Pay that was required to be included in their regular rate of pay, but was not, Ms. Huerta and other non-exempt employees have not been paid all sick pay wages owed to them.

As a result of Defendants’ failure to pay all overtime wages, minimum wages, meal and rest period premium wages owed, and sick pay wages, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Ms. Huerta and other aggrieved employees, and failed to pay all final wages owed to Ms. Huerta and other aggrieved employees upon their respective separations from employment.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 (“Wage Order 1”):

Overtime Wage Violations

Defendants were required to properly pay Ms. Huerta and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek. Wage Order 1, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of 12 hours each workday and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Ms. Huerta and other aggrieved employees to work overtime hours but did not compensate Ms. Huerta or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Minimum Wage Violations

Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Ms. Huerta and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Huerta and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Ms. Huerta and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As described above, Defendants also failed to authorize and permit Ms. Huerta and other aggrieved employees to take all required and compliant rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Ms. Huerta and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for

each workday that all rest periods were not authorized and permitted. See Labor Code § 226.7.

Sick Time Pay Violations

Defendants were required to properly pay Ms. Huerta and other aggrieved employees for all vested sick time at their regular rate of compensation pursuant to Labor Code § 246. Defendants compensated Ms. Huerta and other aggrieved employees at their base rate of pay but did not compensate Ms. Huerta or other aggrieved employees at their regular rate of pay for all such hours.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Ms. Huerta and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Ms. Huerta and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Ms. Huerta and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, overtime and minimum wages, meal and rest period premium wages, and underpaid sick pay wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Ms. Huerta and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee", Ms. Huerta will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil

penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Ms. Huerta's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Ms. Huerta and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Ms. Huerta and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558, by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Huerta and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Huerta and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to Ms. Huerta and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- e. Defendants violated Labor Code § 226 by failing to furnish Ms. Huerta and other aggrieved employees with accurate and compliant itemized wage statements;
- f. Defendants violated Labor Code § 246 by failing to pay Ms. Huerta and other aggrieved employees sick time pay at their regular rate of compensation;
- g. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Ms. Huerta and other aggrieved employees;
- h. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Ms. Huerta and aggrieved employees; and
- i. Defendants violated Labor Code § 204 by failing to pay Ms. Huerta and other aggrieved employees all wages earned at least twice during each calendar month.

LWDA

December 19, 2023

Page 7 of 7

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Captek Softgel International, Inc., c/o C T Corporation System, agent for service of process, 330 N. Brand Blvd. Suite 700, Glendale, CA 91203 (via certified mail)