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VIA ONLINE SUBMISSION

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

Subject: *Abelardo Hernandez v. Captek Softgel International, Inc., et al.*

Dear PAGA Administrator:

This office represents Abelardo Hernandez in connection with his claims under the California Labor Code. Mr. Hernandez was an employee of CAPTEK SOFTGEL INTERNATIONAL, INC. and/or J & D LABORATORIES, INC. For the purpose of this letter, Mr. Hernandez collectively refers to these entities as “CAPTEK.”

The employers may be contacted directly at the addresses below:

CAPTEK SOFTGEL INTERNATIONAL, INC.	J & D LABORATORIES, INC.
16218 ARTHUR STREET	2710 PROGRESS STREET
CERRITOS, CA 90703	VISTA, CA 92081

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

CAPTEK employed Mr. Hernandez as an hourly paid, non-exempt employee from approximately April 2005 to July 2023. Mr. Hernandez worked for CAPTEK as a Quality Assurance Technician at its facility in Cerritos, California. During his employment, Mr. Hernandez typically worked eight (8) hours or more per day and five (5) days or more per week. At the time his employment ended, Mr. Hernandez was compensated approximately \$19.85 per hour. His primary job duties included, without limitation, performing and documenting inspections, checks, tests, and sampling procedures during the manufacturing processes of bottling softgel capsules; performing line clearance for removal of all previous products, components, and foreign materials; and reporting manufacturing operations non-conformances to supervisors.

CAPTEK committed one or more of the following Labor Code violations against Mr. Hernandez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

CAPTEK’s Company-Wide and Uniform Payroll and HR Practices

CAPTEK SOFTGEL INTERNATIONAL, INC. and J & D LABORATORIES, INC. are California corporations. Together, CAPTEK is a leading softgel contract manufacturer in the vitamins, minerals, and supplements industry, with at least three (3) facilities in California. Upon information and belief, CAPTEK maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Cerritos or Vista, California, for all non-exempt, hourly paid employees working for CAPTEK in California, including Mr. Hernandez and other aggrieved employees. At all relevant times, CAPTEK issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Hernandez and other aggrieved employees, regardless of their location or position.

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

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

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

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

¹ These facts, theories, and claims are based on Mr. Hernandez’s experience and counsel’s review of those records currently available relating to Mr. Hernandez’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. Hernandez 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.

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.

First, during the relevant time period, CAPTEK had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Hernandez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with CAPTEK's practices of understaffing and assigning heavy workloads (*see infra*), led Mr. Hernandez and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, approximately twice per week for about 10 minutes, Mr. Hernandez was required to complete tasks, such as reviewing emails from supervisors and consulting with the prior shift's Quality Assurance Technicians to inform himself on the status of pending orders, but was not permitted to clock in and record this time spent working. As another example, approximately twice per week, Mr. Hernandez clocked out at the end of his shift, but was required to continue working to finalize the verification of a pending order, which could take up to 15 minutes. Thus, CAPTEK failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Moreover, CAPTEK had, and continues to have, a company-wide policy and/or practice of requiring Mr. Hernandez and other aggrieved employees to complete mandatory annual trainings, but did not permit them to complete them during their shifts. For example, Mr. Hernandez was required to complete the trainings while he was at home, which consisted of watching videos on CAPTEK's company policies, which took about two (2) hours to complete each time. Thus, CAPTEK failed to track the time Mr. Hernandez and other aggrieved employees spent completing the mandatory trainings, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Second, CAPTEK had, and continues to have, company-wide policies and/or practices of understaffing its locations while assigning heavy workloads, including pressuring employees to meet production deadlines and goals. CAPTEK's policies and/or practices resulted in a failure to provide Mr. Hernandez and other aggrieved employees with adequate meal period coverage, and thus, Mr. Hernandez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. CAPTEK also had a practice of failing to schedule meal periods which, in conjunction with the assignment of heavy workloads, further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately three (3) times per week, Mr. Hernandez worked through his meal periods due to lack of coverage and heavy workload. CAPTEK did not compensate Mr. Hernandez and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Additionally, on information and belief, other aggrieved employees were required to don and doff personal protective equipment ("PPE"), such as gloves, hats, and gowns, at CAPTEK's facilities. However, CAPTEK did not allow other aggrieved employees to report the time spent donning and doffing their PPE at the beginning and end of their meal periods, despite being on CAPTEK's premises and under CAPTEK's control. As a result, other aggrieved employees were required to spend time donning and doffing their PPE off-the-clock. CAPTEK also had a company-wide practice or policy of requiring that other aggrieved employees carry and respond to a company-issued radio at all times. As a result, CAPTEK's management contacted other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. CAPTEK knew

or should have known that other aggrieved employees were performing work while off-the-clock in order to meet CAPTEK's expectations, but failed to compensate them for this time.

Third, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's management pressured employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by CAPTEK. Additionally, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Hernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes elapsed. Thus, CAPTEK did not record all hours worked during meal periods, and Mr. Hernandez and other aggrieved employees performed work during meal periods for which they were not paid.

CAPTEK knew or should have known that as a result of these company-wide practices and/or policies, Mr. Hernandez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Hernandez 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. Hernandez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

CAPTEK's failure to pay Mr. Hernandez 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. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 1-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, as a result of CAPTEK's policy of limiting the amount of overtime employees could accrue, CAPTEK required Mr. Hernandez and other aggrieved employees to perform work off-the-clock before and after their scheduled start and end times to complete work-related tasks, such as reviewing emails from supervisors, discussing the status of pending orders, finalizing the verification of pending orders, and completing mandatory online trainings. CAPTEK failed to track this time that Mr. Hernandez and other aggrieved employees spent working off-the-clock, and Mr. Hernandez and other aggrieved employees received no compensation for this time.

Further, as also stated, due to CAPTEK's policies and/or practices of understaffing its facilities while assigning heavy workloads, including pressure to meet production deadlines and goals, failing to schedule meal periods, and/or requiring employees to respond to radio communications at all times, Mr. Hernandez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. As also stated, on information and belief, CAPTEK required other aggrieved employees to don and doff PPE while off-the-clock, including when leaving the production area for a meal period and when returning to the production area from a meal period.

Also, as stated above, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's managers pressured employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, even when they did not receive a compliant meal period. Additionally, as stated, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Hernandez and other aggrieved employees for a full 30 minutes. Thus, CAPTEK systematically failed to pay Mr. Hernandez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, CAPTEK did not pay minimum wages for all hours worked by Mr. Hernandez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, CAPTEK 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, CAPTEK regularly failed to pay at least minimum wages to Mr. Hernandez 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. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period

may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, CAPTEK had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet production deadlines and goals, which has resulted in a lack of meal period coverage and prevented Mr. Hernandez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, CAPTEK had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Hernandez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, on information and belief, CAPTEK also had policies and/or practices of requiring employees to don and doff PPE prior to entering and before leaving their work areas, along with the requirement that employees carry company-issued radios at all times, which further caused other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Hernandez 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, as stated, about three (3) times per week, Mr. Hernandez was required to work straight through his meal periods. Additionally, Mr. Hernandez sometimes took his meal periods late, after the fifth hour of work, due to the lack of coverage.

Second, as stated above, on information and belief, because CAPTEK frowned upon employees accruing meal period penalties, CAPTEK's management pressured Mr. Hernandez and other aggrieved employees, on threat of discipline, to clock out for meal periods to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, Mr. Hernandez was required to clock out for his first meal periods to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely, uninterrupted meal periods.

Further, as stated, CAPTEK's company-wide timekeeping system prevented Mr. Hernandez and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Hernandez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Third, CAPTEK did not provide Mr. Hernandez 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 his employment, Mr. Hernandez worked shifts in excess of ten (10) or more hours per day but was never provided a second 30-minute meal period. Mr. Hernandez 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, CAPTEK knew or should have known that, as a result of these policies, Mr. Hernandez and other aggrieved employees were prevented from being relieved of all

duties and required to perform some of their assigned duties during meal periods. CAPTEK further knew or should have known that CAPTEK did not pay Mr. Hernandez and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, CAPTEK 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. Hernandez and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that CAPTEK did pay Mr. Hernandez and/or other aggrieved employees premium pay for missed, late, and interrupted meal periods, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees at the correct rate of pay for premiums because CAPTEK systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

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

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Labor Code section 226.7 and the applicable IWC Wage Order also provide that rest periods shall be counted as hours worked for which there shall be no deduction from wages.

During the relevant time period, CAPTEK regularly failed to authorize and permit Mr. Hernandez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, CAPTEK's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Hernandez and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, CAPTEK failed to schedule rest periods, which, coupled with CAPTEK's failure to provide adequate rest period coverage, further led to Mr. Hernandez and other aggrieved employees not being authorized

and permitted to take rest periods. Also, because CAPTEK required other aggrieved employees to don and doff PPE during rest periods and carry a company-issued radio to respond to requests, other aggrieved employees were not relieved of all duty in order to take compliant rest periods.

Furthermore, on information and belief, CAPTEK maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Hernandez and other aggrieved employees remain on the premises during their rest periods. Specifically, CAPTEK's managers erroneously informed employees that should they leave CAPTEK's premises during rest periods, they are to clock out for their rest period. Because of CAPTEK's imposition on employees to clock out for their rest periods when they left the premises, Mr. Hernandez and other aggrieved employees were discouraged from taking all rest periods to which they were entitled, and denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, CAPTEK effectively maintained control over Mr. Hernandez and other aggrieved employees during rest periods. Moreover, to the extent that Mr. Hernandez and other aggrieved employees clocked out for rest periods pursuant to CAPTEK's on-premises rest period policy, CAPTEK unlawfully deducted rest periods from Mr. Hernandez's and other aggrieved employees' wages.

As a result of CAPTEK's practices and policies, Mr. Hernandez 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 rest periods to which they were entitled. For example, approximately five (5) times per week, Mr. Hernandez missed his rest periods, due to the lack of coverage and CAPTEK's failure to schedule rest periods for employees.

CAPTEK have also 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. Hernandez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that CAPTEK did pay Mr. Hernandez and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees at the correct rate of pay for premium wages because CAPTEK failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of compensation, in the regular rate of pay.

Accordingly, CAPTEK failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. CAPTEK has not provided Mr. Hernandez 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, CAPTEK has knowingly and intentionally provided Mr. Hernandez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CAPTEK issued uniform wage statements to Mr. Hernandez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, CAPTEK violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CAPTEK did not record the time Mr. Hernandez and other aggrieved employees spent working off-the-clock, CAPTEK did not list the correct amount of gross wages and net wages earned by Mr. Hernandez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CAPTEK failed to accurately list the total number of hours worked by Mr. Hernandez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

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

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

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, CAPTEK engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Hernandez and other aggrieved employees, in violation of section 1198. Also, in light of CAPTEK’s failure to provide Mr. Hernandez and other aggrieved employees with second 30-minute meal periods to which they were entitled, CAPTEK kept no records of meal start and end times for second meal periods.

Because CAPTEK failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Hernandez 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. Hernandez 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. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(b)-(c), 432, 1198, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l). IWC Wage Order No. 1-2001, subdivision 6(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split

shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 1-2001, subdivision 6(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, Mr. Hernandez sent CAPTEK reasonable written requests for documents and records relating to his employment with CAPTEK. During the relevant time period, CAPTEK failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Mr. Hernandez’s employment. For example, on January 11, 2024, Mr. Hernandez sent a written request to CAPTEK via FedEx overnight mail. On January 12, 2024, FedEx confirmed CAPTEK received Mr. Hernandez’s written request for records. To date, CAPTEK has failed to respond to Mr. Hernandez’s written request for records. Further, on information and belief, CAPTEK has failed to respond other aggrieved employees’ written requests for records within the statutory time limits. Thus, CAPTEK has failed to comply with the reasonable written requests for documents and records relating to Mr. Hernandez’s and other aggrieved employees’ employment within the statutory time limits, in violation of Labor Code sections 226(b)-(c), 432, 1198, 1198.5, and the applicable IWC Wage Order.

Mr. Hernandez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), and/or 2699(a), (f)-(g).

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

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

During the relevant time period, CAPTEK willfully failed to pay Mr. Hernandez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

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

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

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

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

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

Violation of California Labor Code § 246 – Failure to Properly Calculate 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. California Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, CAPTEK did not pay Mr. Hernandez and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, CAPTEK paid Mr. Hernandez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, CAPTEK failed to incorporate all remunerations, including incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Hernandez and/or other aggrieved employees took sick leave and received these other forms of pay, CAPTEK failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, CAPTEK paid Mr. Hernandez and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

CAPTEK's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Hernandez and/or other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 1-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, CAPTEK, on a company-wide basis, required Mr. Hernandez and other aggrieved employees to use their 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 and/or mobile data expenses. For example, Mr. Hernandez was required to use his personal cellular phone to communicate with his coworkers to discuss work-related issues when they worked at CAPTEK’s off-site facility. Mr. Hernandez was also required to download the mobile application for Microsoft Outlook onto his personal cellular phone in order to perform his job duties and respond to electronic communications in a timely manner. Although CAPTEK required Mr. Hernandez and other aggrieved employees to use their personal mobile devices and mobile data to carry out their work-related duties, CAPTEK failed to reimburse them for their costs incurred.

Also, during the relevant time period, CAPTEK required Mr. Hernandez 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. Hernandez spent approximately \$6 per month on office supplies such as pens, because CAPTEK failed to provide him with the necessary supplies which were required for him to complete his assigned duties. Although CAPTEK required Mr. Hernandez and other aggrieved employees to purchase supplies and equipment to carry out their work-related responsibilities, CAPTEK failed to reimburse them for their out-of-pocket costs.

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

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

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

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure

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

During the relevant time period, on information and belief, CAPTEK failed, on a company-wide basis, to provide written notice to Mr. Hernandez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CAPTEK's failure to provide Mr. Hernandez and other aggrieved employees with written notice of basic information regarding their employment with CAPTEK is in violation of California Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Mr. Hernandez 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Hernandez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against CAPTEK for violations of California Labor Code sections 201, 202, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Hernandez 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:

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

Best Regards,

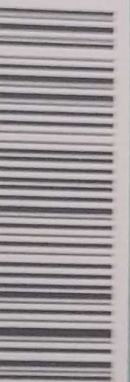
A handwritten signature in black ink, appearing to read "Anthony Castillo", with a stylized flourish at the end.

Anthony Castillo

Copy: CAPTEK SOFTGEL INTERNATIONAL, INC. (via U.S. Certified Mail);
J & D LABORATORIES, INC. (via U.S. Certified Mail)

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

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Captek Softgel International, Inc.
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Cerritos, Ca 90703

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Cerritos, Ca 90703

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Vista, Ca 92081



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☐ Agent
☐ Addressee

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J & D Laboratories, Inc.
2710 Progress Street
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