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an Individual, On Behalf of Herself, Other Aggrieved Employees,  
and the General Public

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF ALAMEDA**

JOHANA SANCHEZ, an individual, on  
behalf of herself, all other aggrieved  
employees, and the general public,

Plaintiff,

vs.

PROGISTICS DISTRIBUTION, LLC, a  
California limited liability company; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO. **24CV087052**

**COMPLAINT FOR:**

- 1. CIVIL PENALTIES UNDER LABOR CODE  
PRIVATE ATTORNEYS GENERAL ACT OF  
2004, LABOR CODE 2698, ET. SEQ**

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**08/13/2024 at 04:46:17 PM**

By: Mar Thomas,  
Deputy Clerk

1 Plaintiff JOHANA SANCHEZ, an individual, hereby files this Complaint (“Complaint”)  
2 against Defendant PROGISTICS DISTRIBUTION, LLC, a California limited liability company; and  
3 DOES 1 through 100, inclusive, (hereinafter collectively referred to as, “Progistics” or  
4 “Defendants”). Plaintiff, in her representative capacity, is informed and believes and on the basis of  
5 that information and belief alleges as follows:

### 6 **INTRODUCTION**

7 1. This representative lawsuit challenges Defendants’ employment practices with  
8 respect to their non-exempt, hourly workers employed in the State of California (hereinafter  
9 “Aggrieved Employees”), based on Defendants’ policy and practice of failing, among other things,  
10 to provide payment for all hours worked at the applicable legal rates, legally compliant meal and rest  
11 breaks, earned wages, including overtime pay, failing to reimburse for necessary business  
12 expenditures, for violations of reporting time pay, and failing to provide accurate wage statements  
13 and waiting time penalties from June 9, 2023 to the present (“Relevant Time Period”).

14 2. At all times relevant hereto, and with certain defined exceptions, Defendants’  
15 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or  
16 designated rates for all hours worked.

17 3. At all times relevant hereto, and with certain defined exceptions, Defendants’  
18 compensation scheme did not fully compensate Plaintiff with overtime compensation for all  
19 overtime hours worked.

20 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants  
21 failed to provide Plaintiff with adequate off-duty meal periods and meal period compensation in  
22 violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 4, section 11.

23 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants  
24 failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor  
25 Code sections 226.7 and 516 and IWC Wage Order No. 4, section 12.

26 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants’  
27 knowingly and intentionally utilized a timekeeping system and/or compensation scheme, which  
28 failed to compensate Plaintiff for all hours worked.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for missed meal and rest periods compensation.

10. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699, the Private Attorneys General Act (“PAGA”), against Defendants for their unlawful employment practices.

## PARTIES

***Plaintiff Johana Sanchez***

11. Plaintiff Johana Sanchez is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Plaintiff worked as an Administrator at Progistics' Ontario office from approximately July 2022 through February 2024. Throughout her employment with Progistics, she was a non-exempt, hourly employee. During the Relevant Time Period, Ms. Sanchez earned a rate of \$21.00 per hour. Ms. Sanchez and other administrators were scheduled to work for eight-hour shifts, but in reality, would perform work duties after their scheduled shifts in order to meet the demands of the job. Furthermore, Aggrieved Employees including Ms. Sanchez would often not be provided meal and rest breaks because of the press of work and the demands associated with their positions.

***Defendant Prologistics Distribution LLC***

12. Plaintiff is informed and believes and based thereon alleges that Defendant Prologistics Distribution is a California limited liability company and now and/or at all times mentioned in this complaint, was licensed to do business, and actually doing business in the state of California.

1 Prologistics Distribution LLC specializes in delivery services of furniture to warehouses nationwide.  
2 Prologistics performs “last mile” delivery resources to its retail customers and clientele by offering an  
3 array of delivery services from factory to door including on call guaranteed delivery services with  
4 same day or next day delivery. Upon information and belief, Prologistics maintains locations  
5 throughout the United States and in California, has facilities in Los Angeles, Ontario, San  
6 Francisco/Oakland, San Diego, and Sacramento. At all relevant times, Defendants issued and  
7 maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-  
8 exempt, hourly paid employees in California, including Ms. Sanchez and other Aggrieved  
9 Employees, regardless of its location or position.

10 ***Does 1 through 100***

11 13. DOES 1 through 100 inclusive are now and/or at all times mentioned in this  
12 Complaint were, licensed to do business and/or actually doing business in the State of California.  
13 Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of  
14 DOES 1 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such  
15 fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek  
16 leave of court to amend this Complaint to allege such names and capacities as soon as they are  
17 ascertained. DOES 1 through 100 are believed to be business entities and individual owners or  
18 management who were also co-employers of the Plaintiff and the other Aggrieved Employees.

19 ***All Defendants***

20 14. Plaintiff is informed and believes and based thereon alleges that at all times herein  
21 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint  
22 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within  
23 the course and scope of said employment and/or agency; furthermore, that each and every Defendant  
24 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or  
25 employer, expressly directed, consented to, approved, affirmed and ratified each and every action  
26 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the  
27 matters referred to herein.

28 15. Plaintiff is informed and believes and based thereon alleges that at all times herein

1 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated  
2 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or  
3 damages alleged in this Complaint.

4 16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
5 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in  
6 a joint venture, partnership, and common enterprise, and were acting within the course and scope of,  
7 and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-  
8 employers of the Plaintiff and the other aggrieved employees.

9 17. Plaintiff is informed and believes and based thereon alleges that Defendants, and each  
10 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided  
11 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every  
12 one of the other Defendants in proximately causing the injuries and/or damages alleged in this  
13 Complaint.

#### 14 **JURISDICTION AND VENUE**

15 18. This Court has jurisdiction over all causes of action herein pursuant to the California  
16 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code  
17 § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because  
18 Defendants operate in this County, does business in the county of Alameda, and because PAGA  
19 enforcement actions are not limited to the county in which Aggrieved Employees performed work.  
20 *Crestwood Behavioral Health, Inc. v. Superior Court*, 60 Cal. App. 5th 1069, 1075 (2021) (in a  
21 PAGA action, a plaintiff is not limited to the county in which he or she performed work).

#### 22 **FACTUAL ALLEGATIONS**

##### 23 ***Defendants' Failure to Provide Statutorily Compliant Meal and Rest Periods***

24 19. Plaintiff and Aggrieved Employees are not provided with legally compliant meal  
25 periods and rest breaks. Aggrieved Employees of Prologistics, including Plaintiff, typically work 8  
26 hours per day. Defendants failed to schedule a meal period where Aggrieved Employees and Ms.  
27 Sanchez are relieved of all duty for a 30-minute period within the first five hours of their shift or pay  
28 the premium compensation for the missed or late meal period. Upon information and belief,

1 Defendants' management team instructed Ms. Sanchez and other Aggrieved Employees to record  
2 their meal breaks at the fifth hour, but then further directed to have the Aggrieved Employees  
3 continue working, without taking the mandated meal break. Consequently, no legitimate meal break  
4 is effectively taken even though a meal break is being recorded. Progistics's de facto policy to  
5 violate the actual policy constitutes a clear violation of California labor laws.

6         20. California law requires that an employer provides an employee who works more than  
7 five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11050(11)(A). Unless an  
8 employee is relieved of all duty during the 30-minute meal period, the meal period is considered an  
9 on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted  
10 only when the nature of the work prevents an employee from being relieved of all duty and the  
11 parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an  
12 employee a lawful meal period, the employer must pay the employee one hour of pay for each  
13 violation. 8 CCR 11050(11)(D). Additionally, California law mandates that an employer must  
14 "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in  
15 duration for every four hours of work. 8 CCR 11050(12)(A). Violation of the rest break provisions  
16 requires the employer pay the employee one hour of pay for each workday a rest period was not  
17 provided. 8 CCR 11050(12)(B). Lastly, in California, the employer is required to keep records of all  
18 hours worked. Labor Code § 1174(d).

19         21. With respect to meal breaks, Aggrieved Employees, including Plaintiff, regularly  
20 work more than five (5) hours per day without receiving an adequate off-duty meal period of at least  
21 thirty (30) minutes during which they were relieved of all duties. Progistics did not provide Ms.  
22 Sanchez and all other Aggrieved Employees in California with one (1) additional hour of pay for  
23 each workday that a proper meal period was not provided. Indeed, most Aggrieved Employees do  
24 not take their meal periods after the conclusion of the fifth hour- if one is taken at all. Progistics also  
25 discourages and dissuades Aggrieved Employees, including Ms. Plaintiff by overloading their  
26 schedules with tasks including preparing orders for shipments, tracking all inventory, handling  
27 inbound and outbound orders, handing out pallet duties related to merchandise, and ensure that all  
28 orders are completed and processed in order for deliveries to be made as scheduled, which could not

1 possibly be completed if Aggrieved Employees, including Plaintiff, were to actually take a timely,  
2 off duty meal period.

3         22. Likewise, Defendants do not provide Aggrieved Employees with a second meal  
4 period for shifts in excess of ten hours or pay the premium compensation for the missed second meal  
5 period. Concerning the second meal period, there is no evidence that Ms. Sanchez and Aggrieved  
6 Employees have agreed to waive their right to a second meal period with respect to shifts lasting  
7 more than 10 hours but less than 12 hours.

8         23. Accordingly, Plaintiff and Aggrieved Employees regularly work more than five (5)  
9 hours per day without receiving an adequate and timely off-duty meal period of at least thirty (30)  
10 minutes during which they were relieved of all duties. In Brinker Aggrieved Corp. v. Superior Court,  
11 53 Cal. 4th 1004, 1040 (2012) the California Supreme Court cited with approval California case law  
12 requiring an employer to affirmatively act to make a meal period available where the employees are  
13 relieved of all duty. See Cicairos v. Summit Logistics, Inc., 133 Cal.App.4th 949, 962-963 (2006)  
14 (“[T]he defendant's obligation to provide the plaintiffs with an adequate meal period is not satisfied  
15 by assuming that the meal periods were taken, because employers have ‘an affirmative obligation to  
16 ensure that workers are actually relieved of all duty.’”; Brown v. Fed. Express Corp., 249 F.R.D.  
17 580, 585 (C.D. Cal.2008) (“It is an employer’s obligation to ensure that its employees are free from  
18 its control for thirty minutes.”); accord Dilts v. Penske Logistics, LLC, 267 F.R.D. 625, 638  
19 (S.D.Cal. 2010). An illusory meal period, where the employer effectively prevents an employee from  
20 having an uninterrupted meal period, does not satisfy this requirement. Cicairos, 133 Cal.App.4th at  
21 962-963; Brown, 249 F.R.D. at 585; Dilts, 267 F.R.D. at 638.

22         24. Prologistics would also fail to provide legally compliant rest breaks to Plaintiff and  
23 Aggrieved Employees. With respect to rest breaks, Plaintiff and other similarly situated Aggrieved  
24 Employees are not provided any training about statutory breaks under California law, are not  
25 scheduled to take rest breaks, and in fact, rest breaks are not made available to them. Aggrieved  
26 Employees, including Ms. Sanchez, are not provided with a second rest period for shifts lasting six  
27 to ten hours, or a third rest period for shifts in excess of ten hours. At a minimum, “an employer  
28 must inform employees in a meaningful or consistent way that they could take rest breaks, [and] the

1 definition of any such rest breaks.” Godfrey v. Oakland Port Services Corp., 230 Cal.App.4th 1267,  
2 1286 (2014).

3         25.     Upon information and belief, Progistics’ management team would direct Aggrieved  
4 Employees to not take rest breaks. This directive stemmed from the Progistics’ upper management  
5 that staff had to “grind hard” to achieve success in the company. Aggrieved Employees were  
6 therefore dissuaded from taking breaks, labeled as lazy, and accused of not exerting enough effort.  
7 Management would consistently badger them to work faster, refrain from pausing, and increase  
8 productivity. On many occasions, Plaintiff was instructed to not take her rest breaks because there  
9 was simply too much work to do. Aggrieved Employees, including Ms. Sanchez, report not taking  
10 rest periods because their schedules were overloaded with assignments to such an extent that taking  
11 a rest period may result in a missed delivery or shipment. Ms. Sanchez also reports that she and other  
12 Aggrieved Employees endured relentless harassment and unwarranted criticism, which had not only  
13 undermined her morale and professional confidence but also impeded on her ability to take adequate  
14 rest breaks. As a result of this practice, Progistics violated California law which requires that an  
15 employer must “authorize and permit” an employee to take a duty-free rest period not less than 10  
16 minutes in duration for every four hours of work. 8 CCR 11070(12)(A). Violation of the rest break  
17 provisions requires the employer pay the employee one hour of pay for each workday a rest period  
18 was not provided. 8 CCR 11070(12)(B). Similar to the illegal directives concerning meal breaks,  
19 Aggrieved Employees, including Claimant, simply were not provided with statutorily compliant rest  
20 breaks.

21         26.     Furthermore, even if Progistics paid meal or rest period premiums for missed,  
22 untimely, or interrupted meal or rest periods, it would be inconsequential and immaterial for PAGA  
23 purposes. In Kirby v. Immoos Fire Protection, Inc., 53 Cal.4th 1244 (2012), the Cal. Supreme Court  
24 clarified that an employer does not have a lawful “choice” between providing a meal period or  
25 paying a premium. Id. at 1257. Thus, the extra hour of pay does not excuse the violation – the  
26 employer has still committed a violation even if the remedy for the violation has been paid. See Wert  
27 v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4). *See also* Ruelas v. Costco,  
28 2015 WL 1359326 (N.D. Cal. 2015) (holding employees could recover both meal period premium



1 and PAGA penalty).

2 ***Defendants’ Failure to Pay Minimum Wages, including Overtime Payment***

3 27. IWC Wage Order, number 4 defines “hours worked” to mean “the time during which  
4 an employee is subject to the control of an employer and includes all the time the employee is  
5 suffered or permitted to work, whether or not required to do so.”

6 28. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly  
7 provided that on and after January 1, 2021, the minimum wage shall be not less than fourteen dollars  
8 (\$14.00) per hour.

9 29. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that  
10 on and after January 1, 2022, the minimum wage for all industries shall be not less than fifteen  
11 dollars (\$15.00) per hour, that on and after January 1, 2023, the minimum wage for all industries  
12 shall be not less than fifteen dollars and fifty cents (\$15.50) per hour.

13 30. Labor Code section 1194(a) provides in relevant part: “Notwithstanding any  
14 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage is  
15 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage,  
16 including interest thereon, reasonable attorney’s fees, and costs of suit.”

17 31. Labor Code section 1194.2(a) provides in relevant part: “In any action under Section  
18 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum  
19 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated  
20 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

21 32. Labor Code section 1197 provides: “The minimum wage for employees fixed by the  
22 commission is the minimum wage to be paid to employees, and the payment of a less wage than the  
23 minimum so fixed is unlawful.”

24 33. Defendants’ Aggrieved Employees, including Plaintiff, are categorized and classified  
25 as non-exempt, hourly employees and must be paid for all hours worked. Hours worked include, but  
26 are not limited to, all hours that an employee is permitted or suffered to work including, but not  
27 limited to, off-the-clock work that an employer either knew or should have known that an employee  
28 was performing.

1           34.     Upon information and belief, Progistics does not compensate Aggrieved Employees,  
2 including Ms. Sanchez, for all hours worked. Specifically, Defendants require Aggrieved  
3 Employees, including Ms. Sanchez, to regularly work off-the clock. Aggrieved Employees,  
4 including Plaintiff, were often scheduled to work eight-hour shifts, however, due to the sheer volume  
5 of assignments to complete, Ms. Sanchez and other Aggrieved Employees were required to work  
6 nine to ten-hour shifts in order to meet the demands of the job. Specifically, Plaintiff was instructed  
7 by Progistics' supervisor to clock out using the time stamp device and employee identification  
8 number at the end of her shift but return to her desk to complete all necessary paperwork and other  
9 administrative tasks. On many occasions the Defendants' officers would not allow Plaintiff and other  
10 Aggrieved Employees to leave the office until all the work was complete to Progistics' satisfaction,  
11 even if that meant they worked off the clock without compensation. Consequently, Plaintiff after  
12 clocking-out would continue working off-the-clock to finish the necessary paperwork and office  
13 work but was not compensated for the additional hours.

14           35.     Labor Code Section 1194 further provides that an employee receiving less than the  
15 legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full  
16 amount of this minimum wage or overtime compensation, including interest thereon, reasonable  
17 attorney's fees, and costs of suit.

18           36.     Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday  
19 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the  
20 seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
21 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:  
22 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
23 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in  
24 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less  
25 than twice the regular rate of pay of an employee."

26           37.     Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment  
27 of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all  
28 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for

1 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked  
2 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)  
3 hours on the seventh (7th) day of work in any one workweek.

4 38. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to  
5 payment for all hours worked, including overtime compensation for all hours worked in excess of  
6 the hours and time specified in the Wage Order, statutes and regulations identified herein.

7 39. Throughout the Relevant Time Period, Defendants did not maintain adequate records  
8 of all wages earned, hours worked, and meal and rest breaks taken.

9 40. Accordingly, Defendants failed to properly record the actual hours worked by  
10 Plaintiff and Aggrieved Employees and thus failed to pay minimum wages and overtime wages for  
11 the actual amount of minimum and overtime hours worked.

12 ***Defendants' Failure to Reimburse for Necessary Business Expenditures***

13 41. California law also required that an employer "indemnify his or her employee for all  
14 necessary expenditures or losses incurred by the employee in direct consequence of the discharge or  
15 his or her duties" §2802(a). In contravention of this provision of the Labor Code, Progistics would  
16 fail to reimburse Ms. Sanchez, and all similarly situation individuals for all business expenses  
17 incurred as part of their jobs. In particular, Ms. Sanchez and similarly situated individuals would  
18 have to use their personal cell phones to clock in and out for their shifts through an application.  
19 Furthermore, Progistics did not provide Wi-Fi internet at the office, therefore, when Aggrieved  
20 Employees used their personal cell phones to clock in and out using the application, they were  
21 forced to use their own cellular data and personal hot spots to complete the necessary clock in and  
22 lock out procedures.

23 ***Defendants' Failure to Provide Accurate, Itemized Wage Statements***

24 42. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number  
25 4, section 7 required employers to maintain adequate employment records and provide employees  
26 with accurate itemized wage statements showing gross wages, total hours worked, all applicable  
27 hourly rates worked during each pay period, the corresponding number of hours worked at each  
28 hourly rate, and meal breaks taken.

1           43. Defendants' wage statements are facially non-compliant by virtue of the defective  
2 meal and rest period and sick time usage and accrual policies and practices, the uncompensated  
3 work, the unlawful timekeeping systems which does not accurately record the total hours worked by  
4 Aggrieved Employees, including Plaintiff.

5           44. Wage statements provided to Plaintiff and the other Aggrieved Employees by  
6 Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of  
7 the Labor Code section 226, and IWC Wage Order number 4, section 7.

8           45. Moreover, Defendants did not maintain adequate records of all wages earned, hours  
9 worked, and breaks taken.

10 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

11           46. At all times relevant hereto, Labor Code § 201 required an employer that discharges  
12 an employee to pay compensation due and owing to said employee immediately upon discharge.  
13 Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due  
14 and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor  
15 Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon  
16 discharge or resignation, as required under Sections 201 and 202, then the employer is liable for  
17 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

18           47. Defendants willfully and knowingly failed to pay Aggrieved Employees, upon  
19 termination of employment, all accrued compensation including payment of minimum wage  
20 compensation, missed meal and rest periods compensation and for time spent performing work off  
21 the clock at Defendants' direction.

22 ***Exhaustion of Administrative Remedies***

23           48. Plaintiff has complied with the procedures for bringing suit specified in California  
24 Labor Code Section 2699.3. By letter dated May 14, 2024, Plaintiff, on behalf of herself and the  
25 other Aggrieved Employees, gave written notice by electronic mail and certified mail to the Labor  
26 and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the  
27 California Labor Code alleged to have been violated, including the facts and theories to support the  
28 alleged violations. Attached as **Exhibit "1"** is a true and correct copy of the referenced letter.

49. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

### FIRST CAUSE OF ACTION

## CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

**(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)**

50. Plaintiff incorporates by reference the allegations set forth above.

51. As set forth above, Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated May 14, 2024, Plaintiff, on behalf of herself and the other Aggrieved Employees, gave written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

52. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys' general action, Plaintiff represents herself, and other Aggrieved Employees of Defendants that were in California, against whom Defendants have allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* Plaintiff is not suing in her individual capacity, but solely under the Private Attorneys General Act, on behalf of the State of California for all aggrieved employees, including herself.

53. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

54. Plaintiff is informed and believes that throughout the Relevant Time Period, Defendants have applied centrally devised policies and practices to Plaintiff and the other Aggrieved

1 Employees with respect to wages, hours, and working conditions.

2 **Failure to Pay Minimum Wages and Designated Rates**

3 55. At all relevant times, California Labor Code Sections 1194, 1197 and 1197.1 provide  
4 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to  
5 employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally,  
6 Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that  
7 violate the applicable Wage Order.

8 56. Where any statute or contract requires an employer to maintain the designated wage  
9 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while  
10 purporting to pay the wage designated by statute or by contract.

11 57. At all relevant times, Defendants maintained a policy and practice of requiring  
12 Plaintiff and the other aggrieved employees to remain under Defendants' control without paying  
13 therefore, which resulted in them earning less than the legal minimum wage in the State of  
14 California for all hours worked. At all relevant times, Defendants maintained a policy and practice of  
15 requiring Plaintiff and the other aggrieved employees to remain under Defendants' control, while  
16 purportedly on a meal and rest break, and without paying therefor, which resulted in them earning  
17 less than the legal minimum wage in the State of California for all hours worked.

18 58. Defendants' failure to pay Plaintiff and other Aggrieved Employees minimum wages  
19 and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and  
20 other Aggrieved Employees are entitled to recover civil penalties pursuant to sections 1197.1 and  
21 2699(a), (f), and (g).

22 **Failure to Pay For Overtime Compensation**

23 59. Labor Code Section 1194 provides that an employee receiving less than the legal  
24 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount  
25 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's  
26 fees, and costs of suit.

27 60. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday  
28 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

1 seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
2 one-half times the regular rate of pay for an employee.” Labor Code Section 510(a) further states:  
3 “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice  
4 the regular rate of pay for an employee.” Labor Code Section 510(a) further states: “[A]ny work in  
5 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less  
6 than twice the regular rate of pay of an employee.”

7 61. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment  
8 of overtime wages equal to one and one-half (1 1/2) times an employee’s regular rate of pay for all  
9 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for  
10 payment of overtime wages equal to double the employee’s regular rate of pay for all hours worked  
11 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)  
12 hours on the seventh (7th) day of work in any one workweek.

13 62. Plaintiff and the other aggrieved employees were classified as non-exempt by  
14 Defendants and were therefore entitled to overtime compensation for all hours worked in excess of  
15 the hours and time specified in the Wage Order, statutes and regulations identified herein.

16 63. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees  
17 were frequently required to performed work during meal and rest breaks.

18 64. As a matter of policy and/or practice, Defendants directed Aggrieved Employees to  
19 work before the official start of their shifts and following the conclusion of the shift, and that  
20 Defendants’ knowledge of work transpiring during day and night shifts, has resulted in Plaintiff and  
21 other Aggrieved Employees not being compensated for all hours worked.

22 65. Accordingly, Defendants failed to properly record the actual hours worked by  
23 Plaintiff and other Aggrieved Employees, and thus failed to pay overtime wages for the actual  
24 amount of overtime hours worked.

25 **Failure to Provide Timely and Adequate Meal and Rest Breaks**

26 66. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative  
27 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal  
28 periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide

1 them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work  
2 period of more than ten (10) hours.

3 67. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from  
4 requiring employees to work during required meal periods and require employers to pay non-exempt  
5 employees an additional hour of premium wages on each workday that the employee is not provided  
6 with a required meal period.

7 68. At relevant times during the applicable limitations period, Defendants failed to  
8 provide Plaintiff and Aggrieved Employees with uninterrupted meal periods of at least thirty  
9 (30) minutes on each day that they worked five (5) or more hours, as required by Labor Code  
10 Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take  
11 all legally required meal periods. Plaintiff is informed, believes, and thereon alleges that, at relevant  
12 times during the applicable limitations period, Defendants maintained a policy or practice of not  
13 providing the other Aggrieved Employees with uninterrupted meal periods of at least thirty  
14 (30) minutes for each five (5) hour work period, as required by Labor Code Section 512 and the  
15 Wage Order, as a result of duties and schedules that do not permit them to take all legally required  
16 meal periods.

17 69. Section 12 of the Wage Order imposes an affirmative obligation on employers to  
18 permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes  
19 of net rest time for each four (4) hour work period, or major portion thereof, that must be in the  
20 middle of each work period insofar as is practicable.

21 70. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from  
22 requiring employees to work during required rest periods and require employers to pay non-exempt  
23 employees an additional hour of premium wages on each workday that the employee is not provided  
24 with the required rest period.

25 71. At relevant times during the applicable limitations period, Defendants failed to  
26 provide Plaintiff and Aggrieved Employees with a net rest period of at least ten (10) minutes for  
27 each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result  
28 of duties and schedules that do not permit Plaintiff and Aggrieved Employees to take all legally



1 required rest breaks.

2 72. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the  
3 applicable limitations period, Defendants maintained a policy or practice of not providing the other  
4 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work  
5 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules  
6 that do not permit them to take all legally required rest breaks.

7 73. Plaintiff is further informed, believes, and thereon alleges that Defendants rarely, if  
8 ever, issues any compensation to Aggrieved Employees for missed, late or shortened meal and/or  
9 rest breaks.

10 **Failure to Provide and Maintain Compliant Wage Statements**

11 74. Labor Code Section 1174 requires that every person employing labor in this state  
12 shall keep (1) a record showing the names and addresses of all employees employed and the ages of  
13 all minors; (2) at a central location in the state or at the plants or establishments at which employees  
14 are employed, payroll records showing the hours worked daily by and the wages paid to, and the  
15 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at  
16 the respective plants or establishments; (3) such records in accordance with rules established for this  
17 purpose by the commission, but in any case, on file for not less than three years. This statute also  
18 prevents an employer from prohibiting an employee from maintaining a personal record of hours  
19 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to  
20 keep the records required by Section 1174.

21 75. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved  
22 employees were entitled to receive, semimonthly or at the time of each payment of wages, an  
23 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable  
24 hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at  
25 each hourly rate by the employee.

26 76. Defendants failed to provide Plaintiff with accurate itemized statements in accordance  
27 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with  
28 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of

1 the unlawful labor and payroll practices described herein.

2 77. Plaintiff is informed and believes and thereon alleges that, at all relevant times during  
3 the applicable limitations period, Defendants maintained a policy or practice of not providing  
4 aggrieved employees with accurate itemized wage statements by providing them with wage  
5 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and  
6 deductions from wages earned as a result of the unlawful labor and payroll practices described  
7 herein.

8 78. Plaintiff is informed and believes and thereon alleges that Defendants' failure to  
9 provide her and the other aggrieved employees with accurate written wage statements is knowing  
10 and intentional.

11 79. Plaintiff is informed and believes and thereon alleges that Defendants had the ability  
12 to provide her and the aggrieved employees with accurate wage statements, but intentionally  
13 provided wage statements that they knew are not accurate.

14 80. As a result of being provided with inaccurate wage statements by Defendants,  
15 Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate  
16 wage statements were violated and they were misled about the amount of wages they had actually  
17 earned and were owed. In addition, the absence of accurate information on their wage statements  
18 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and  
19 mathematical computations to determine the amounts of wages owed, has caused difficulty and  
20 expense in attempting to reconstruct time and pay records, and/or has led to the submission of  
21 inaccurate information about wages and amounts deducted from wages to state and federal  
22 government agencies.

23 81. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on  
24 behalf of themselves and other current or former employees, to bring a civil action to recover civil  
25 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

26 **Failure to Pay Wages Upon Termination**

27 82. Labor Code Section 201 provides that all earned and unpaid wages of an employee  
28 who is discharged are due and payable immediately at the time of discharge.

1           83. Labor Code Section 202 provides that all earned and unpaid wages of an employee  
2 who quits after providing at least 72-hours' notice before quitting are due and payable at the time of  
3 quitting and that all earned and unpaid wages of an employee who quits without providing at least  
4 72-hours' notice before quitting are due and payable within 72 hours.

5           84. Labor Code Section 203 provides that the wages of an employee continue on a daily  
6 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and  
7 unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

8           85. Plaintiff is informed and believes that Defendants' failure to timely pay them all of  
9 their earned and unpaid wages, including unpaid minimum wages and overtime wages, and  
10 unprovided rest and meal period premium wages, have been willful in that, at all relevant times,  
11 Defendants have deliberately maintained policies and practices that violate the requirements of the  
12 Labor Code and the Wage Order even though, at all relevant times, they have had the ability to  
13 comply with those legal requirements.

#### 14                                   **Section 558 Penalties**

15           86. The PAGA claims are also brought against Defendants pursuant to provisions of the  
16 labor code including § 558 which permits liability of persons or employers who violate or cause to  
17 be violated Labor Code and IWC regulations. California Labor Code Section 2699.

18           87. The PAGA states:  
19 Notwithstanding any other provision of law, any provision of this code that  
20 provides for a civil penalty to be assessed and collected by the Labor and  
21 Workforce Development Agency or any of its departments, divisions,  
22 commissions, boards, agencies, or employees, for a violation of this code, may, as  
23 an alternative, be recovered through a civil action brought by an aggrieved  
24 employee on behalf of himself or himself and other current or former  
25 employees...

26           88. One provision of law enforceable through PAGA as to civil penalties, though not  
27 unpaid wages, is Labor Code § 558, which states the following:

28           (a) Any employer or other person acting on behalf of an employer who violates,  
or causes to be violated, a section of this chapter or any provision regulating hours  
and days of work in any order of the Industrial Welfare Commission shall be  
subject to a civil penalty as follows:  
(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for  
each pay period for which the employee was underpaid in addition to any amount  
sufficient to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
2 employee for each pay period for which the employee was underpaid in addition  
to an amount sufficient to recover underpaid wages...

3 **Penalties Authorized by PAGA**

4 89. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other  
5 Aggrieved Employees of Defendants are entitled to, and seek to, recover civil penalties for  
6 Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 225.5,  
7 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698, et seq  
8 and 2698 *et seq.*, during the Relevant Time Period in the following amounts:

- 9 a. For violations of California Labor Code sections 201, 202, 203, 210, 226.7, and  
10 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period  
11 for each initial violation and two hundred dollars (\$200.00) for each aggrieved  
12 employee per pay period for each subsequent violation (penalty amounts established  
13 by California Labor Code Section 2699(f)(2));
- 14 b. For violations of California Labor Code Section 1194-1197.1, 1198, one hundred  
15 dollars (\$100.00) for each aggrieved employee per pay period for each initial  
16 violation and two hundred dollars and fifty (\$250.00) for each aggrieved  
17 employee per pay period for each subsequent violation regardless of whether the  
18 initial violation is intentionally committed (penalty amounts established by  
19 California Labor Code § 1197.1);
- 20 c. For violations of California Labor Code Sections 216 and 221, one hundred  
21 dollars (\$100.00) for each aggrieved employee for each initial violation and two  
22 hundred dollars (\$200.00) for each aggrieved employee for each subsequent or  
23 willful violation (penalty amounts established by California Labor Code §  
24 225.5);
- 25 d. For violations of California Labor Code Section 1174, five hundred dollars  
26 (\$500.00) for each of Defendants' violations in addition to any other penalties or  
27 fines permitted by law (penalty amounts established by California Labor Code §  
28 1174.5);

- 1 e. For violations of California Labor Code Section 226, two hundred fifty dollars  
2 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)  
3 per employee for each subsequent violation (penalty amounts established by  
4 California Labor Code Section 226.3);
- 5 f. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)  
6 per employee for initial violation and two hundred dollars (\$200.00) per employee  
7 for each subsequent violation, plus 25 percent of the amount unlawfully withheld  
8 (penalty amounts established by California Labor Code Section 210);
- 9 g. For violations of California Labor Code section 510, 511, 512, 551, 552 and,  
10 Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars (\$50.00) for each  
11 aggrieved employee for each initial violation for pay period for which the  
12 employee was underpaid in addition to an amount sufficient to recover unpaid  
13 wages and one hundred dollars (\$100.00) for each underpaid employee for each  
14 pay period for which the employee was underpaid in addition to an amount  
15 sufficient to recover unpaid wages (penalty amounts established by California  
16 Labor Code Section 558).
- 17 h. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for  
18 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay  
19 period for which the employee was underpaid; for each subsequent violation, one  
20 hundred dollars (\$100.00) for each underpaid employee for each pay period for  
21 which the employee was underpaid (penalty amounts established by California  
22 Labor Code Section 558).

23 90. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and  
24 the other Aggrieved Employees, is entitled to an award of reasonable attorneys' fees and costs.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff on behalf of herself and on behalf of all other Aggrieved Employees,  
27 prays for judgment against Defendants as follows:

- 28 a. Civil penalties;

- b. Other penalties and fines permitted by law;
- c. Costs of suit;
- d. Reasonable attorneys' fees;
- e. Pre-judgment and post-judgment interest as provided by law; and
- f. Such other and further relief as the Court deems just and proper.

DATED: August 13, 2024

**BOYAMIAN LAW, INC.**



By: \_\_\_\_\_  
Michael H. Boyamian  
Attorneys for Plaintiff JOHANA SANCHEZ  
an Individual, On Behalf of Herself, Other  
Aggrieved Employees, and the General  
Public

## **EXHIBIT 1**



## BOYAMIAN LAW

May 14, 2024

**SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION**

Labor and Workforce Development Agency  
Attention: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, California 94102

Re: *Johana Sanchez adv. Progistics Distribution, LLC, et al.*  
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Johana Sanchez (hereinafter “Claimant”), with respect to claims on behalf of herself and other similarly situated current and former, non-exempt, hourly employees (collectively, hereinafter referred to as “Aggrieved Employees”) of Progistics Distribution, LLC (“Progistics” or “Company”) who worked in California from May 14, 2023 and continuing to the present (“Relevant Time Period”). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a).

Below we set forth the facts and theories which we believe support our contention that Progistics has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failure to pay minimum wages and all hours worked including overtime, failure to provide meal and rest periods, and failure to reimburse employees for necessary business expenses.

**I. Facts & Theories About the Case**

Progistics Distribution LLC specializes in delivery services of furniture to warehouses nationwide. Progistics offers on call guaranteed delivery services with same day or next day delivery. Progistics has violated California’s labor laws with respect to paying its Aggrieved Employees such as Claimant including failure to compensate employees for all hours worked, failure to pay overtime compensation, and failure to provide adequate meal and rest periods.

Johana Sanchez worked as an Administrator at Progistics’ Riverside office from approximately July 2022 through February 2024. Throughout her employment with Progistics, she was a non-exempt, hourly employee. During the Relevant Time Period, Ms. Sanchez earned a rate of \$21.00 per hour. Ms. Sanchez and other administrators were scheduled to work for eight-hour shifts, but in reality, would perform work duties after their scheduled shifts in order to meet the demands of the job. Furthermore, Aggrieved Employees including Ms. Sanchez would often not be provided meal and rest breaks because of the press of work and the demands associated with their positions.



**A. Failure to Provide Statutory Meal & Rest Periods- Violation of Labor Code Sections 226.7 and 512**

Current and former non-exempt, hourly employees (hereinafter “Aggrieved Employees”), including Ms. Sanchez, did not receive adequate or timely meal and rest breaks.

Our investigation has revealed that Ms. Sanchez and all other Aggrieved Employees were told by Prologistics’ management team that they were not allowed to take rest breaks. This directive stemmed from the Company’s upper management that staff had to “grind hard” to achieve success in the company. Aggrieved Employees were therefore dissuaded from taking breaks, labeled as lazy, and accused of not exerting enough effort. Management would consistently badger them to work faster, refrain from pausing, and increase productivity. On many occasions, Claimant was instructed to not take her rest breaks because there was simply too much work to do.

Ms. Sanchez and all other Aggrieved Employees in California regularly work more than five (5) hours per day without receiving an adequate off-duty meal period of at least thirty (30) minutes during which they were relieved of all duties. Prologistics did not provide Ms. Sanchez and all other Aggrieved Employees in California with one (1) additional hour of pay for each workday that a proper meal period was not provided. Indeed, most Aggrieved Employees do not take their meal periods after the conclusion of the fifth hour- if one is taken at all. Prologistics also discourages and dissuades Aggrieved Employees, including Ms. Sanchez by overloading their schedules with tasks including preparing orders for shipments, tracking all inventory, handling inbound and outbound orders, handing out pallet duties related to merchandise, and ensure that all orders are completed and processed in order for deliveries to be made as scheduled, which could not possibly be completed if Aggrieved Employees, including Ms. Sanchez, were to actually take a timely, off duty meal period.

California law requires that an employer provides an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11070(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. *Id.* However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11070(11)(D).

In addition, Prologistics requires Ms. Sanchez and other Aggrieved Employees to continuously work without providing rest breaks. Ms. Sanchez and other Aggrieved Employees regularly worked more than three-and-one-half (3.5) hours without being permitted to take a ten (10) minute rest period. Prologistics did not provide Ms. Sanchez and other Aggrieved Employees one (1) additional hour of pay for each workday that a rest period was not provided. Aggrieved Employees, including Ms. Sanchez, report not taking rest periods because their schedules were overloaded with assignments to such an

extent that taking a rest period may result in a missed delivery or shipment. Ms. Sanchez also reports that she and other Aggrieved Employees endured relentless harassment and unwarranted criticism, which had not only undermined her morale and professional confidence but also impeded on her ability to take adequate rest breaks.

California law mandates that an employer must “authorize and permit” an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11070(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11070(12)(B). Similar to the illegal directives concerning meal breaks, Aggrieved Employees, including Claimant, simply were not provided with statutorily compliant rest breaks.

And even if Prologistics paid meal or rest period premiums for missed, untimely, or interrupted meal or rest periods, it would be inconsequential and immaterial for PAGA purposes. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “Section 226.7 does not give employers a lawful choice between providing either meal and rest breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation – the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4).

**B. Failure to Pay for All Hours Worked - Violation of Labor Code Sections 216, 510, 1194, 1194.2, and 1197**

Our investigation has further revealed that Prologistics does not compensate Aggrieved Employees, including Ms. Sanchez, for all hours worked. Specifically, Prologistics requires Aggrieved Employees, including Ms. Sanchez, to regularly work off-the clock. Our investigation has revealed that Aggrieved Employees, including Ms. Sanchez were often scheduled to work eight-hour shifts, however, due to the sheer volume of assignments to complete, Ms. Sanchez and other Aggrieved Employees were required to work nine to ten-hour shifts in order to meet the demands of the job. Specifically, Ms. Sanchez was instructed by Prologistics’ supervisor to clock out using the time stamp device and employee identification number at the end of her shift but return to her desk to complete all necessary paperwork and other administrative tasks. On many occasions the Company’s officers would not allow Ms. Sanchez and other aggrieved employees to leave the office until all the work was complete to the Company’s satisfaction, even if that meant they worked off the clock without compensation. Consequently, Ms. Sanchez after clocking-out would continue working off-the-clock to finish the necessary paperwork and office work but was not compensated for the additional hours.

California law requires that an employer compensate an employee for all hours worked. Pursuant to Labor Code § 1194 Defendants had a duty to pay Plaintiff not less than the minimum required hourly rate of pay set by the Department of Industrial

Relations, and legal overtime wages. Sections 1194 and 1197 direct employers to compensate employees at the state-mandated minimum wage for all hours worked. Cal. Lab. Code §§ 1194, 1197. California law requires payment of overtime premium pay for all hours worked by non-exempt employees in excess of eight hours in one day, 40 hours in one week, and for the first eight hours on the seventh-straight day of work in one workweek. *See, e.g.*, Labor Code § 510. It further requires payment of double-time premium pay for all hours worked by such employees in excess of twelve hours in one day, or in excess of eight hours on the seventh-straight day of work in a single workweek. *Id.* Additionally, In California, the employer is required to keep records of all hours worked. Labor Code § 1174(d).

### **C. Unreimbursed Business Expenses**

California law also required that an employer “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge or his or her duties” §2802(a). In contravention of this provision of the Labor Code, Prologistics would fail to reimburse Ms. Sanchez, and all similarly situated individuals for all business expenses incurred as part of their jobs. In particular, Ms. Sanchez and similarly situated individuals would have to use their personal cell phones to clock in and out for their shifts through an application. Furthermore, Prologistics did not provide Wi-Fi internet at the office, therefore, when Aggrieved Employees used their personal cell phones to clock in and out using the application, they were forced to use their own cellular data and personal hot spots to complete the necessary clock in and lock out procedures.

### **D. Other Claims**

The other alleged violations, including waiting time penalties, are largely derivative of the failure to pay minimum wage and overtime claims as well as the failure to provide rest period claims. These unpaid wages and outstanding rest period were also not paid at the time of the employees’ termination or resignation, in violation of Labor Code Section 203. Additionally, wages that had been accounted for were not paid to employees upon the requisite time following their termination or resignation.

## **II. Scope of Anticipated Action**

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 (“PAGA”). Based on the foregoing facts, Ms. Sanchez is asserting PAGA claims on behalf of herself and on behalf of all other non-exempt, hourly employees employed by Prologistics at its California warehouse or office locations from May 14, 2023, to the present. Ms. Sanchez seeks civil penalties under PAGA for the following Labor Code violations:

1. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7 and 512. Specifically, with respect to meal breaks, Prologistics does not provide or otherwise permit Plaintiff and other Aggrieved Employees to take off-duty meal periods, and does not pay

one additional hour of pay at their regular rate of compensation for each missed meal period. Prologistics also does not pay Claimant and other Aggrieved Employees for their rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.

2. Violations of Labor Code section 2802, requiring employers to indemnify employees for all work-related expenditures. Specifically, Prologistics does not indemnify Plaintiff and other Aggrieved Employees for business related expenses incurred by Claimant and other Aggrieved Employees in the discharge of their work duties, including, but not limited to, required use of personal cell phones.

3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as Prologistics does not include all hours worked and wages earned on the wage statements of Ms. Sanchez and other Aggrieved Employees along with the meal and rest break premiums owed.

4. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay aggrieved employees, including Ms. Sanchez, on the regular pay day all owed wages, and Prologistics' failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 et seq.

5. Violations of Labor Code sections 201 through 203, requiring the timely payment of wages, as Prologistics has not timely paid those Aggrieved Employees, including Claimant, who are no longer employed with the Company all wages owed and due after termination of employment.

Accordingly, we believe the Company has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1194-1197.1, 1198, 2802, and 2698, et seq., as well as the relevant IWC orders and regulations, and that Ms. Sanchez and other similarly situated current and former Aggrieved Employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

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We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If Progistcs wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,



Michael H. Boyamian

Cc: Progistcs Distribution, LLC (*Sent via Certified U.S. Mail*)  
1505 Corporation  
C T Corporation System (Agent of Service of Process)  
Attention: Amanda Garcia (Authorized Employee)  
Attention: Jessie Gastelum (Authorized Employee)  
Attention: Gabriela Sanchez (Authorized Employee)  
330 N Brand Blvd. Suite 700  
Glendale, CA 91203