



August 16, 2024

VIA LWDA WEBSITE

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

Re: *Emily Fuentes v. RND International, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Emily Fuentes in claims arising from her employment with RND International, LLC; and DOES 1 through 100 (collectively “RND”). Ms. Fuentes is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to RND’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

RND is in the business of logistics and shipping. Ms. Fuentes worked for RND from approximately September 2020 until approximately September 7, 2023. Her most recent position was that of a Shipping Clerk. Ms. Fuentes’ primary job duties revolved around customer service, shipping, scheduling, and assisting with human resources functions. Ms. Fuentes’ general schedule was from around 8:00 a.m. until between 5:00-6:00 p.m., Monday through Friday. Additionally, she and other aggrieved employees were often made to work on Saturdays and Sundays depending on work demands. Indeed, Ms. Fuentes and other aggrieved employees would work all seven days a in a workweek, and sometimes more than seven days straight. However, as discussed below, Ms. Fuentes worked considerably more hours than she was credited for on her wage statements. Ms. Fuentes was paid at a rate of approximately \$22.00 per hour at the time of her separation with RND.

For purposes of this letter, the “aggrieved employees” whom Ms. Fuentes seeks to represent are the other aggrieved employees of RND in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Ms. Fuentes’ employment with RND, Ms. Fuentes and other aggrieved employees were not paid for all hours worked. Furthermore, Ms. Fuentes and other aggrieved employees routinely worked overtime hours but did not receive overtime compensation equal to one and one-half times their regular rate of pay for all overtime hours worked. For example, Ms. Fuentes and other aggrieved employees were

instructed to keep track of their time on a paper sheet and thereafter enter them into the “Paychex” application that they were made to utilize on their personal cellular phones. However, Ms. Fuentes and other aggrieved employees routinely discovered hours worked missing from their paychecks, the vast majority of which should have been paid as overtime hours. Further, as stated, Ms. Fuentes would frequently work seven days in a workweek, thus entitling her to statutory double time compensation, however despite her entitlement to such pay, RND failed to pay Ms. Fuentes for all statutory double time hours worked. Instead, RND employed a stated practice/policy of specifically instructing Ms. Fuentes and other aggrieved employees to not log their hours worked on Sundays in favor of RND paying them \$100 in cash (a wholly insufficient amount considering that even at a straight time rate, their hours worked should have entitled them to at least \$176). Indeed, despite the fact that the vast majority of the shifts that Ms. Fuentes and other aggrieved employees worked on Sundays should have entitled them to double-time compensation for each hour worked, RND would simply pay Ms. Fuentes and other aggrieved employees less than their straight time hourly rate during these shifts. Consequently, due to RND’s unlawful timekeeping and payment policies and practices that failed to compensate for all hours worked, Ms. Fuentes and other aggrieved employees have been deprived of all required minimum, overtime wages, and double time wages earned.

Ms. Fuentes and other aggrieved employees were not authorized to take all legally required rest periods. Ms. Fuentes and the other employees would be made to work through their rest periods to meet the intense workloads imposed on them by RND. Due to the overwhelming workload and the company culture, Ms. Fuentes and the other aggrieved employees were generally not permitted to exercise any compliant duty-free rest periods. Additionally, RND’s policy/practice prohibited Ms. Fuentes and other aggrieved employees from leaving RND’s facilities rest periods, and therefore, failed to authorize and permit Ms. Fuentes and other aggrieved employees to take duty-free paid rest periods for every four-hour period worked, or major fraction thereof. Further, upon information and belief during at least a portion of the relevant time period, RND maintained no payroll code or other mechanism for the payment of rest period premium payments under Labor Code § 226.7 in the event that a legally compliant rest period was not authorized or permitted to Ms. Fuentes and the other aggrieved employees.

RND also rarely, if ever, provided Ms. Fuentes and other aggrieved employees with a compliant first meal period when they worked shifts in excess of 5.0 hours. Ms. Fuentes and other aggrieved employees rarely, if ever, were entitled to exercise the use of a timely thirty-minute uninterrupted meal period despite always working at least 6.0 hours every shift. Rather, Ms. Fuentes and other aggrieved employees were not provided all legally compliant meal periods due to RND’s meal period policies and practices which fail to provide a timely 30-minute duty-free first meal period (i.e. a first meal period commencing before the end of the fifth hour of work). Ms. Fuentes estimates that she did not receive a compliant first meal period, whether it be shortened, missed, or interrupted, on at approximately 90% of the shifts that she worked. For example, missed meal periods were a common occurrence as Ms. Fuentes and other aggrieved employees were made to adhere to strict schedules and deadlines that caused them to be pressured to forego meal

periods. Ms. Fuentes estimates that she worked through the entirety of her shifts without exercising a meal period at all on approximately 1/3 of the shifts that she worked, however she and other aggrieved employees were specifically instructed by warehouse manager Jose Navarro and floor supervisor Mirna Garcia to falsify their time records to indicate that timely 30-minute meal periods were exercised. Furthermore, even on those occasions where Ms. Fuentes and other aggrieved employees did receive meal periods, they were almost always interrupted and/or late. Ms. Fuentes would have to discuss work-related matters with her supervisors and coworkers off-the-clock during her meal periods and estimates that her meal periods were late on nearly 60% of the shifts that she worked. Indeed, Ms. Fuentes as an HR assistant was instructed to “adjust the times” (i.e. falsify time records) of temp employees by Ms. Garcia, a directive she was extremely uncomfortable with and complained to RND’s Chief Financial Officer Art Holmes about. However, Mr. Holmes brushed off Ms. Fuentes’ concerns, instead simply telling her to continue falsely manipulating time records “until we get audited”. Ms. Fuentes’ shortened, late, and on-duty meal periods were an intentional direct result of RND’s policy/practice. RND also failed to provide second meal periods when Ms. Fuentes and other aggrieved employees worked shifts in excess of 10.0 hours. Ms. Fuentes worked in excess of 10 hours frequently during her employment, but she cannot recall receiving a second meal period. On those occasions when Ms. Fuentes and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, RND failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant time period, RND maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not authorized or permitted to Ms. Fuentes and the other aggrieved employees.

RND failed to adequately reimburse Ms. Fuentes and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring them to utilize their personal cellular phones for work purposes on a daily basis, whether scheduled to work or not, without any reimbursement for cell phone costs.

RND failed to meet its obligations to provide paid sick leave to Ms. Fuentes and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Ms. Fuentes and other aggrieved employees were not provided paid sick leave on all of those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b).

As a result of RND’s failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof to Ms. Fuentes and other aggrieved employees, RND has maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued

inaccurate wage statements. Furthermore, as stated above, RND failed to conform to the requirements of Labor Code § 226(a) by failing to include hours and compensation on the wage statements issued to Ms. Fuentes and other aggrieved employees when they were forced to work off the clock and were paid “under the table” on Sunday shifts, constituting facial wage statement violations.

Furthermore, RND violated Labor Code § 204 by failing to pay Ms. Fuentes and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, RND failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Ms. Fuentes and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; vi) the address of the legal entity that is the employer; vii) the telephone number of the employer; viii) identifying information for the employer’s workers’ compensation insurance carrier; and ix) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. Fuentes and other aggrieved employees, RND failed to do so in violation of Labor Code § 2810.5.

As described above, RND committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Orders:

Minimum Wage Violations

RND was required to pay Ms. Fuentes and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; and the IWC Wage Orders, § 4. As alleged above, RND maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. Fuentes and other aggrieved employee whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. Fuentes and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

RND was required to pay Ms. Fuentes and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; the IWC Wage Orders, § 3. the IWC Wage Orders, § 3 requires an employer to pay overtime wages when an employee’s hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, RND caused Ms. Fuentes and other aggrieved employees to work overtime hours but did not compensate Ms. Fuentes and other aggrieved employees at one and one-half times their regular rate of pay for such

hours, nor did they compensate Ms. Fuentes and other aggrieved employees twice their regular rate of pay for double-time hours worked.

Meal Period Violations

As alleged above, RND failed to provide Ms. Fuentes and other aggrieved employees with all required and compliant meal periods due to RND's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. *See* Labor Code §§ 226.7 and 512; the IWC Wage Orders, § 11. As a result, Ms. Fuentes and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, RND also failed to authorize and permit Ms. Fuentes and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; the IWC Wage Orders, § 12. As a result, Ms. Fuentes and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

RND was required to furnish Ms. Fuentes and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 9, § 7. As a result of RND's failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, RND maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Fuentes and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. RND failed to timely pay Ms. Fuentes and

other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, RND's failure to pay all final wages due to Ms. Fuentes and other aggrieved employees was willful and, consequently, entitles Ms. Fuentes and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day RND failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

Failure to Reimburse Necessary Business Expense

RND was subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience to the directions of the employer." RND was subject to Labor Code § 2804, which states that "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State." As alleged herein, due to RND's unlawful reimbursement practices, RND failed to indemnify Ms. Fuentes and other aggrieved employees for all necessary business expenses incurred.

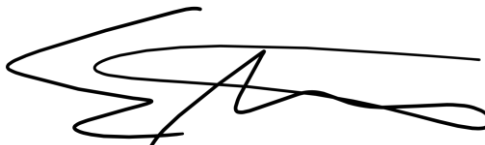
As an "aggrieved employee," Ms. Fuentes will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Fuentes' own investigation, and on information and belief, RND committed and continues to commit the following Labor Code violations:

- a. RND violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. Fuentes and other aggrieved employees the statutory minimum wage for all hours worked;
- b. RND violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Fuentes and other aggrieved employees all overtime compensation earned;
- c. RND violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Fuentes and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. RND violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Fuentes and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Ms. Fuentes and other aggrieved employees at their respective regular rates of compensation;

- e. RND violated Labor Code § 226 by failing to furnish Ms. Fuentes and other aggrieved employees with accurate and compliant itemized wage statements;
- f. RND violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Ms. Fuentes and other aggrieved employees;
- g. RND violated Labor Code §§ 2802 and 2804 by failing to reimburse Ms. Fuentes and other aggrieved employees for all work-related expenses incurred;
- h. RND violated Labor Code § 204 by failing to pay Ms. Fuentes and other aggrieved employees all wages earned at least twice during each calendar month;
- i. RND violated Labor Code § 245.5 by failing to permit and authorize Ms. Fuentes and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- j. RND violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Fuentes and other aggrieved employees; and
- k. RND violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. Fuentes and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and RND if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC

A handwritten signature in black ink, appearing to read 'ES', with a stylized flourish extending from the end.

Ethan C. Surls

cc: RND International, LLC (via certified mail)