

May 26, 2023

Via Online Filing

California Labor & Workforce Development
Agency
455 Golden Gate Avenue, 10th Floor San
Francisco, CA 94102

Via Certified Return Receipt Mail

Frito-Lay
7701 Legacy Drive
Plano, TX 75024

Via Certified Return Receipt Mail

CT Corporation System
Registered Agent For
Rolling Frito-Lay Sales, LP
1200 South Pine Road
Plantation, FL 33324

C T Corporation System
711 Capitol Way S Ste 204,
Olympia, Wa, 98501

Re: Notice Pursuant to the Private Attorneys General Act, California
Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Sunpreet Athwal, (collectively, "Plaintiff"), currently residing in Irvine, California, has retained W Employment Law Group to represent her and other similarly situated current and former employees (collectively, the "Aggrieved Employees") of Rolling Frito-Lay Sales LP/ PepsiCo-Fritolay, a company (Foreign Limited Partnership) incorporated in Delaware headquartered in Texas (hereinafter "Defendant(s)") regarding claims of violation of the California Labor Code. Defendant is a company providing freight services for snack foods interstate. Frito-Lay is an American subsidiary of PepsiCo that manufactures, markets, and sells chips/snack foods.

Defendant currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as a "Food Services Sales Manager". Plaintiff works from her personal residence in Irvine as well as travels and works on the field per Defendant's orders.

This notice formally serves to inform Defendant of Plaintiff's intent to file a complaint against Defendant and bring causes of action for violations of the California Labor Code and the seeks to bring an action for civil penalties under the Private Attorney Generals Act of 2004 (the "PAGA") and for injunctive relief for the violations further detailed below.

As further detailed below, Defendant violated numerous provisions of California's Labor Code including, but not limited to, violations of **Labor Codes §§ 201-203, 204, 226(a), 226.7, 227.3, 510, 512, 1174 (d), 1194(a), and 2802, and Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4).**

During the relevant statutory period, Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. On

innumerable occasions Plaintiff's rest or meal breaks would be cut short or implausible due to the high pressure environment of the job and the nonstop nature of the work. Routinely, Plaintiff and the Aggrieved Employees could not take a rest and/or meal period due to the fact that Defendant required them to not only work on the field but also working from home with long hours and weekend work; which forced Plaintiff and the Aggrieved Employees to work through their rest and meal breaks. Plaintiff and the Aggrieved Employees were given unreasonable demands that could not be met unless they skipped meal and rest breaks. Plaintiff and the Aggrieved Employees state that they took their meal and rest breaks when in fact they were actually working off the clock. Therefore, the time that Plaintiff and those similarly situated Aggrieved Employees were working off the clock was never properly or accurately recorded nor compensated. Due to Defendant's derelict timekeeping practices, Defendant never paid Plaintiff and the Aggrieved Employees for the time they worked off the clock. Defendant has also failed to pay Plaintiff and the Aggrieved Employees the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. At no time did Plaintiff or the Aggrieved Employees validly waive their rest and meal break periods.

Due to Plaintiff and the Aggrieved Employees working off the clock and around the clock, in many instances because of the unrecorded hours worked, their shifts exceeded 8 hours a day or over 40 hours in a week and weekends. However, Defendant also failed to properly pay such employees all of the overtime wages that they had earned for the time spent working off the clock that was never accurately recorded. Plaintiff's employment ended on approximately July 29, 2022 and Defendant did not timely pay all wages and compensation due.

Further, during the relevant statutory period, Plaintiff and certain of the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications. Utilization of their personal cell phones was an essential part of the job and Defendant only reimbursed 80% of the bills. Use of Plaintiff and the Aggrieved Employees' personal cell phones was daily and constant throughout their entire work day. Without the phone, Plaintiff could not conduct any business or carry out job duties. Such use of their personal cell phones is and was for business purposes, which needed to be reimbursed by Defendant. Defendant has not reimbursed Plaintiff or the Aggrieved Employees in full for the expenses they incurred in the utilization of their personal cell phones. Plaintiff was not properly compensated for expenses incurred in the utilization of personal cell phone.

As a direct consequence of the foregoing practices, Defendant has:

- failed to compensate employees for every hour worked per Labor Code §§ 204 and 1194
- failed to timely pay all wages due upon separation or termination of employment per Labor Codes §§ 201-203
- failed to furnish accurate wage statements per Labor Code § 226
- made rest/meal break violations per Labor Code §§ 226.7, 512 (a)
- failed to pay unused paid vacation time per Labor Code § 227.3
- failed to pay overtime pay per Labor Code § 510 (a)
- failed to maintain records of hours worked per Labor Code § 1174(d)
- failed to reimburse work related expenses per Labor Code § 2802

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.¹

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states: (*see next page*)

Factual History and Background

Plaintiff was employed by the Defendant for the period of September 21, 2012 to July 29, 2022 (when she resigned), nearly a decade. Plaintiff's annual salary in 2022 was \$126,600 with a 15% bonus (\$18,990) for a total compensation of \$145,590. Plaintiff's bonus was part of the Management Incentive Plan (MIP) based on company's total performance, individual performance, and then also team performance. The Plaintiff was home-based and worked from her residence and traveled for company-related tasks. Plaintiff managed 6 employees. Plaintiff's employment ended on approximately July 29, 2022 and Defendant did not timely pay all wages and compensation due.

As a "Food Services Sales Manager" Plaintiff and Aggrieved Employees were to develop/maintain positive relationships with customers, grow sales, lead/conduct meetings, plan and meet sales objectives and goals set by Defendant, develop sales strategies, and make sales presentations to customers and related tasks. The position required Plaintiff and Aggrieved Employees to work primarily from their remote locations (home offices) with some visits and work in the field.

From approximately May 2021 - May 2022, Defendant assigned Plaintiff to relocate to Southern California with a relocation package. Plaintiff agreed to this but this caused many issues with her employer. Plaintiff was taunted by co-workers and was called "the Grinch". She was not allowed to talk, was forced to work late in the evening, and was constantly pressured to work more. She was forced to work weekends. Defendant did not have a system for tracking the weekends worked although they demanded it. It was a common occurrence that Plaintiff and Aggrieved Employees worked many hours without any meal or lunch breaks to keep up with demands and company expectations. Plaintiff was made to work in a high pressure environment

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision

(k) of § 96 , § s 98.6 , 201 , 201.3 , 201.5 , 201.7 , 202 , 203 , 203.1 , 203.5 , 204 , 204a , 204b , 204.1 , 204.2 , 205 , 205.5 , 206 , 206.5 , 208 , 209 , and 212, subdivision (d) of § 213 , § s 221 , 222 , 222.5 , 223 , and 224 , paragraphs (1) to (5) , inclusive, (7) , and (9) of subdivision (a) of § 226 , § s 226.7 , 227 , 227.3 , 230 , 230.1 , 230.2 , 230.3 , 230.4 , 230.7 , 230.8 , and 231, subdivision (c) of § 232 , subdivision (c) of § 232.5 , § s 233 , 234 , 351 , 353 , and 403, subdivision (b) of § 404 , § s 432.2 , 432.5 , 432.7 , 435 , 450 , 510 , 511 , 512 , 513 , 551 , 552 , 601 , 602 , 603 , 604 , 750 , 751.8 , 800 , 850 , 851 , 851.5 , 852 , 921 , 922 , 923 , 970 , 973 , 976 , 1021 , 1021.5 , 1025 , 1026 , 1101 , 1102 , 1102.5 , and 1153, subdivisions (c) and (d) of § 1174 , § s 1194 , 1197 , 1197.1 , 1197.5 , and 1198, subdivision (b) of § 1198.3 , § s 1199 , 1199.5 , 1290 , 1292 , 1293 , 1293.1 , 1294 , 1294.1 , 1294.5 , 1296 , 1297 , 1298 , 1301 , 1308 , 1308.1 , 1308.7 , 1309 , 1309.5 , 1391 , 1391.1 , 1391.2 , 1392 , 1683 , and 1695, subdivision (a) of § 1695.5 , § s 1695.55 , 1695.6 , 1695.7 , 1695.8 , 1695.9 , 1696 , 1696.5 , 1696.6 , 1697.1 , 1700.25 , 1700.26 , 1700.31 , 1700.32 , 1700.40 , and 1700.47 , § s 1735 , 1771 , 1774 , 1776 , 1777.5 , 1811 , 1815 , 2651 , and 2673, subdivision (a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4, 6310, 6311, and 6399.7.

which made it very difficult for her to take rest and meal breaks.

Plaintiff was told that she could not join in events because “she was a terrorist.” Her Director/Direct Supervisor was the main person who gave her a hard time and said these things. Human Resources was aware of the issues and when Plaintiff filed to resign the Senior Director offered to move her to a different team but the Direct Supervisor declined this offer for her. The Direct Supervisor convinced her to stay and offered her a higher salary so as not to lose her.

Defendant has requested that Plaintiff pay back \$31,486 to Defendant for Relocation Costs or they will send it to collections. Defendant has refused to pay Plaintiff for accrued vacation time and did not provide her with a way to document the hours. Plaintiff’s director had already advised and approved of Plaintiff making up for missed work time by working on the weekends. Plaintiff has already made up for her lost time by working weekends. Plaintiff documented all of the weekend time but Defendant did not acknowledge it and said they would not compensate for weekend work even though she was promised compensation for it beforehand. Plaintiff is owed 9 days in 2022 and 6 days in 2021 for accrued vacation days (total of 15 days).

Plaintiff and Aggrieved Employees were required to utilize their personal cell phones every single day in the course of their work for the Defendant in their home offices and on the field. Defendant reimbursed Plaintiff and Aggrieved Employees for only 80% of their cell phone bills. Defendant was always aware that the Plaintiff and Aggrieved Employees were utilizing their personal cell phones for work-related purposes. Cell phones were vital to the work.

Plaintiff and Aggrieved Employees were expected and required by the Defendant to work around the clock while on and off the clock. Plaintiff and Aggrieved Employees were expected to respond to texts, phone calls, emails, and requests from Defendant at all times. Plaintiff and Aggrieved Employees’ time working “off the clock” was not documented and the time was not compensated by the Defendant.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) 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 work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.”

Per the IWC Wage Order No. 4, Section 12(A) & B “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were routinely impeded in their ability to take Labor Code compliant, timely and duty-free rest

breaks. Plaintiff and Aggrieved Employees were rarely provided an uninterrupted meal break due to Defendant requiring them to work around the clock to meet deadlines, meet unreasonable quotas, and make visits to customers and complete numerous tasks at their home offices. Accordingly, Defendant actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendant has not paid premium pay penalties for the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 9 which set forth California employers' affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 9, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period. Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *"All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays."*

Under Labor Code §1194 (a) *"Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."*

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney's fees and costs. Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, *"Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."*

As indicated above, the Plaintiff and the Aggrieved Employees consistently worked over 40 hours a week. Plaintiff and Aggrieved Employees worked off the clock to meet deadlines/quotas. Such time was never recorded, nor compensated by Defendant. The time worked while off the clock meant that Plaintiff and the Aggrieved Employees were had on innumerable occasions worked more than an eight-hour shift but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) and 1194 have been violated. Thus, Plaintiff and the Aggrieved Employees are entitled to recover unpaid overtime for all hours worked, plus penalties and interest, as well as their attorney's fees. Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, “*Every person employing labor in this state shall:... (d) Keep, 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...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece- rate units earned.*”

As indicated above, due to Defendant’s operational policies, procedures and practices, Plaintiff and the Aggrieved Employees often engaged in work related activities while off the clock and worked undocumented overtime. Also, Plaintiff and Defendant had an agreement to make up for lost work time on weekdays with weekend work. Defendant would not provide Plaintiff with a way to document the hours, although she did it herself. Defendant did not compensate for those hours. However, the time Plaintiff and the Aggrieved Employees spent working while off the clock and overtime is/was not ever tracked or recorded by the Defendant in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendant’s derelict record keeping and unlawful business and compensation practices, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to “*furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.*”

As indicated above, Plaintiff and the Aggrieved Employees often work/worked on their own personal time while off the clock and worked consistent overtime (and weekends). Due to Defendant’s derelict and inaccurate timekeeping practices such time and hours work was never recorded by Defendant. Consequently, such hours worked, including overtime hours and corresponding correct rates of pay is and was not reflected on the Plaintiff and Aggrieved Employees’ wage statements during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendant violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees’ respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiffs and certain of the Aggrieved Employees' employment relationships with Defendant terminated, Defendant failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendant has failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendant has failed to pay the Plaintiffs and the Aggrieved Employees all of their earned wages, included overtime wages earned, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Failure To Pay Unused Paid Vacation Time

Labor Code § 227.3 provides, *"Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness."*

As discussed above, Defendant has refused to pay Plaintiff for accrued vacation time and did not provide her with a way to document the hours. Defendant gave permission to Plaintiff to work on weekends to make up for lost weekday hours. Defendant later would not compensate for weekend work even though she was promised compensation. Plaintiff is owed 9 days in 2022 and 6 days in 2021 for accrued vacation days (total of 15 days) in violation of Labor Code § 227.3.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, *"An employer shall indemnify his or her employee 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 her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."*

As described above, the Plaintiff and certain of the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendant for 100% of the costs. Defendant has violated Labor Code § 2802 and the Plaintiff and the similarly situated Aggrieved Employees are entitled to reimbursement of these work-related expenses incurred, as well as their attorneys' fees, penalties and interest thereon as permitted by §2802. Plaintiff intends to bring an action against Defendant under the PAGA to recover civil penalties as provided by California law.

Conclusion

In sum, as has been factually alleged, Defendant has violated **Labor Codes §§ 201-203, 204, 226(a), 226.7, 227.3, 510, 512, 1174 (d), 1194(a), and 2802, and Industrial Welfare Commission Wage Order No. 4-2001 (IWC No. 4)**. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable civil penalties as provided by California law as provided for under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

W EMPLOYMENT LAW GROUP

A handwritten signature in blue ink, appearing to read 'JN Whitehead', with a stylized flourish at the end.

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