



November 4, 2024

VIA LWDA WEBSITE

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

Re: *Bryan Ramirez v. Club Demonstration Services, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Bryan Ramirez (“Mr. Ramirez”) in claims for Labor Code violations arising from her employment with Club Demonstration Services, Inc.; and DOES 1 through 100 (collectively referred to herein as “Employers”). Mr. Ramirez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Employers’ 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.

For purposes of this letter, the “aggrieved employees” whom Mr. Ramirez seeks to represent are the other non-exempt employees of Employers who performed work in California at any time during the one year preceding the date of this letter through the present.

Mr. Ramirez started his employment with Employers as a sales advisor and worked for Employers between approximately March 29, 2023 and February 22, 2024. Employers are in the marketing industry and operate food sample tables. Mr. Ramirez was generally scheduled to work 5 days per week from either approximately 10:30 a.m. to 4:30 p.m. or approximately 12:30 p.m. to 6:55 p.m., but he often worked longer.

Throughout the duration of Mr. Ramirez’s employment with Employers, Mr. Ramirez and other aggrieved employees were not paid for all hours worked as Employers did not accurately keep track of all hours worked. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Mr. Ramirez and other aggrieved employees actually worked. Employers required Mr. Ramirez and other aggrieved employees to clock in and out on a tablet using a code. Employers instructed Mr. Ramirez and other aggrieved employees to arrive at work 10 minutes early. Mr. Ramirez and other aggrieved employees often spent at least 5 minutes waiting outside of the door before clocking in at the start of each work day. Mr. Ramirez estimates that he spent at least approximately 5 to 20 minutes per week using his phone

outside of work hours to communicate with his supervisors. Mr. Ramirez also estimates that he spent at least 1-2 hours per week performing off the clock work after clocking out at the end of the work day performing work such as inputting data. Additionally, upon information and belief, Employers had a practice of shaving time worked beyond the 6th hour of the workplace. Overall, Mr. Ramirez and other aggrieved employees were not compensated for at least approximately 2 hours of work each week either due to working off the clock or due to Employers shaving off their time worked.

Furthermore, Mr. Ramirez and other aggrieved employees worked overtime hours, but did not receive all overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Employers also maintained a policy/practice of not compensating Mr. Ramirez and other aggrieved employees for all their overtime hours worked in the pay period. As discussed above, upon information and belief, Employers maintained a policy/practice of shaving time worked off of the paystubs of Mr. Ramirez and other aggrieved employees for purposes of avoiding payment for work beyond the scheduled time. Employers also did not compensate Mr. Ramirez and other aggrieved employees for their overtime worked off the clock. Employers also failed to provide "Reporting Time Pay" to Mr. Ramirez and other aggrieved employees on those occasions where they sent Mr. Ramirez and other aggrieved employees home early due to running out of product. Employers failed to provide any sort of compensation to Mr. Ramirez and the other aggrieved employees on those occasions where they reported to the worksite, but were unable to perform their regular work hours in violation of the "Reporting Time Pay" requirements as set forth in Wage Order 4 § 5. As a result, Employers failed to ensure that Mr. Ramirez and other aggrieved employees were being paid at least the minimum wage for all hours worked, and failed to ensure that Mr. Ramirez and other aggrieved employees received proper overtime wages for all overtime hours worked.

Mr. Ramirez and other aggrieved employees were not authorized to take all legally required rest periods. Employers relied on a handwritten log to keep track of the rest periods taken by Mr. Ramirez and other aggrieved employees. Mr. Ramirez and other aggrieved employees almost daily did not receive a full, uninterrupted rest period because they were interrupted by work communications such as text messages from their supervisors during their rest periods at least once or twice per day. Also, on a near daily basis, the "breaker" employee responsible for sending employees to take a rest period, would start the timer on the employee's rest period even though the employee was still finishing work or had not yet removed their food handling attire such as a hat, safety gloves or apron. Despite Employers' failure to authorize and permit Mr. Ramirez and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers almost never provided Mr. Ramirez and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Ramirez and other aggrieved employees were not authorized to take lawful rest periods.

Employers often did not provide Mr. Ramirez and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours. Instead of clocking in and out, Employers kept track of the meal periods of Mr. Ramirez and other aggrieved employees through a handwritten log. However, approximately 3 times per week, the meal periods of Mr. Ramirez and other aggrieved employees were interrupted by work communications such as text messages or phone calls from supervisors or other employees. Almost daily, Mr. Ramirez and other aggrieved employees experienced meal period violations because Employers deprived them of a couple of minutes at the beginning of their 30-minute meal periods because the “breaker” employee responsible for sending employees to take a meal period would start the clock on the meal periods of Mr. Ramirez and other aggrieved employees even though they were still finishing work, talking to a customer or removing their food handling attire. For approximately 2.5 months while Mr. Ramirez worked as a supervisor, Mr. Ramirez worked through his meal periods approximately 2-3 times per week. Mr. Ramirez estimates a meal period violation that resulted in a meal period being interrupted, cut short or beginning after the 5th hour of the work day approximately 4-5 times per week. Despite Employers’ failure to provide Mr. Ramirez and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers almost never provided Mr. Ramirez and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7. Upon information and belief, during a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of meal period premiums in the event that Mr. Ramirez and other aggrieved employees were not authorized to take meal periods.

Furthermore, Employers failed to adequately reimburse Mr. Ramirez and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, requiring Mr. Ramirez and other aggrieved employees to utilize their personal cell phones and purchase work boots for necessary business purposes.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers’ failure to accurately compensate Mr. Ramirez and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all rest periods.

Employers failed to issue to Mr. Ramirez and other aggrieved employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, 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.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Ramirez 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; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Ramirez and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Minimum Wage Violations

Employers were required to pay Mr. Ramirez 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; Wage Order 4 § 4. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Ramirez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Ramirez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Ramirez and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. Wage Order 4, § 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, Employers caused Mr. Ramirez and other aggrieved employees to work overtime hours but did not compensate Mr. Ramirez and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employers failed to provide Mr. Ramirez and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before

the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Ramirez 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, Employers also failed to authorize and permit Mr. Ramirez and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. As a result, Mr. Ramirez 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.”)

Failure to Reimburse Necessary Business Expense

Employers were 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 her obedience to the directions of the employer.” Employers were 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 Employers’ unlawful reimbursement practices, Employers failed to indemnify Mr. Ramirez and other aggrieved employees for all necessary business expenses incurred, including, utilization of personal cell phones and the purchase of work boots for necessary business purposes. Mr. Ramirez and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Ramirez 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 4, § 7. As a result of Employers’ failure to pay all overtime

wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Ramirez 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. Employers failed to timely pay Mr. Ramirez 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, Employers' failure to pay all final wages due to Mr. Ramirez and other aggrieved employees was willful and, consequently, entitles Mr. Ramirez and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employers failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Ramirez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Ramirez's own investigation, and on information and belief, Employers committed and continue to commit the following Labor Code violations:

- a. Employers violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Ramirez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Ramirez and other aggrieved employees all overtime compensation earned;
- c. Employers 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 Mr. Ramirez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Ramirez and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Ramirez and other aggrieved employees at their respective regular rates of compensation;
- e. Employers violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Ramirez and other aggrieved employees for all work-related expenses incurred;

- f. Employers violated Labor Code § 226 by failing to furnish Mr. Ramirez and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Ramirez and other aggrieved employees;
- h. Employers violated Labor Code § 204 by failing to pay Mr. Ramirez and other aggrieved employees all wages earned at least twice during each calendar month;
- i. Employers violated Labor Code § 245.5 by failing to permit and authorize Mr. Ramirez and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- j. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Ramirez and other aggrieved employees; and
- k. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Ramirez and other aggrieved employees.
- l. Employers violated Labor Code §§ 204 and 221-223 by failing to pay Mr. Ramirez and other aggrieved employees all agreed-upon wages including bonus wages accrued.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Employers 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



Jessica Flores

cc: Club Demonstration Services, Inc. (via certified mail)