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May 27, 2022

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Labor and Workforce Development Agency /
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

**Via Certified U.S. Mail – Return
Receipt Requested**

Myojo U.S.A., INC.
C/O Law Office of Gene H. Shioda
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Square One Staffing
C/O Korey Richardson, LLP
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1055 Wilshire Blvd., Suite 1690
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Re: AMENDED Notice Pursuant to California Labor Code §2699.3

To Representatives of Myojo USA, Inc. and the LWDA:

This office represents Maria Villegas, a former non-exempt employee of Myojo U.S.A., INC. (“Myojo”) and Square One Staffing (“Square One” or hereinafter referred to as “Employers” jointly). Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, Ms. Villegas amended here June 17, 2020 PAGA Notice. This PAGA Notice sets forth additional specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders No. 1-2001, No. 17-2001 and any other applicable wage order, which Ms. Villegas alleges that Employers have violated, including the facts and theories to support the alleged violations.

Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employers in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers.

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This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employers and any and all related and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, staffing companies, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employers (“aggrieved employees”) in the State of California regarding Employers unlawful policies and practices, including all aggrieved employees directly hired by Myojo and those who were hired by staffing agencies and provided to Myojo during the applicable PAGA Period.

Among other things, Ms. Villegas and other aggrieved employees allege that Employers are liable for the following: failure to provide meal and rest periods to non-exempt employees, in violation of Labor Code §§ 226.7, 510, 512, 1194, 1197 and Wage Order Nos. 1-2001, 17-2001, and any other applicable wage order, §§ 11-12; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of Labor Code § 226.7 and Wage Order Nos. Wage Order Nos. 1-2001, 17-2001 and any applicable wage order, §§ 11(B) and 12(B); failure to pay non-exempt employees overtime wages, and failure to properly calculate overtime wages, in violation of Labor Code §§ 510, 1194, 1198, and Wage Order Nos. 1-2001, 17-2001, and any applicable wage order, § 3; failure to pay non-exempt employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, in violation of Labor Code § 1194; failure to timely pay non-exempt employees all wages due, in violation of Labor Code § 204; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of Labor Code §§ 201-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of Labor Code §§ 1174, 1174.5, and Wage Order Nos. 1-2001, 17-2001, and any applicable wage order, § 7; and failure to provide supplemental COVID-19 sick leave and pay pursuant to Labor Code §§248.2, 248.6, et seq.

FACTS AND THEORIES

Ms. Villegas was employed by Employers in the warehouse of Myojo USA, Inc., located at 6220

Prescott Court, Chino, California 91710. Villegas was employed by Employers since December 2019. Ms. Villegas, on behalf of herself and other aggrieved employees provides notice of the following facts and theories:

I. Meal Period Violations - AMENDED

Pursuant to California Labor Code § 226.7, 512 and IWC Wage Order Nos. 1-2001, 17-2001 and any other applicable wage order, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. California Employers are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees.

In particular, Employers failed to implement a meal period policy applicable to Ms. Villegas and the other aggrieved employees which provided for full thirty (30) minute meal periods. Moreover, Employers regularly did not allow non-exempt employees, including Ms. Villegas, to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). More specifically, Employers failed to implement adequate policies or procedures to provide meal periods to its non-exempt employees. Among other things, Employers systematically understaffed its office such that Ms. Villegas and the other aggrieved employees could not take their meal periods. This practice caused Ms. Villegas and the other aggrieved employees to miss or otherwise take non-compliant meal periods.

Next, Employers consistently denied Ms. Villegas and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period. Further, Ms. Villegas and other aggrieved employees could not leave their workstations and/or no one was available to cover for them which resulted in taking non-compliant meal periods. Finally, Employers failed to maintain accurate records when Ms. Villegas and the other aggrieved employees took their meal periods and instead rounded their times to make it appear as if Ms. Villegas and the other aggrieved employees received their full thirty (30) minute meal periods all in violation of the applicable IWC Wage Order.

Employers further violated California Labor Code § 226.7 and IWC Wage Order Nos. 1-2001, 17-2001 and all other applicable wage orders, by willfully failing to compensate Ms. Villegas and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided. Employers further violated California Labor Code § 226.7, 510, 1194, 1197, and IWC Wage Order Nos. 1-2001, 17-2001, and all other

applicable wage orders, by failing to compensate Ms. Villegas and other aggrieved employees for all hours worked during their meal periods.

II. Rest Period Violations

Employers failed to authorize and permit Ms. Villegas and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order Nos. 1-2001, 17-2001, § 12 and all other applicable wage orders. California Employers are required to provide a ten (10) minute rest period for every four hours worked or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation for each day in which a legally-compliant rest period is not provided.

As with meal periods, Employers policies and practices caused Ms. Villegas and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken and only allowing one (1) rest period for work shifts that were seven (7) hours or longer. Further, as set forth above, Employers implemented gaunt staffing policies resulted in the inability of Ms. Villegas and other aggrieved employees to take compliant rest periods.

Ms. Villegas and other aggrieved employees also always needed to get permission from their supervisor in order to take their rest periods, and to secure coverage (i.e., find another aggrieved employee to cover their job duties), and these requests were frequently denied or there was no one for Ms. Villegas and the other aggrieved employees to approve their requests. Ms. Villegas and other aggrieved employees also work long shifts in excess of 7 hours where no second rest period was authorized or permitted. When they did get a chance to take rest periods, these rest periods were regularly interrupted because Ms. Villegas and other aggrieved employees were required to perform work during their rest periods.

Employers further violated California Labor Code § 226.7 and IWC Wage Order Nos. 1-2001, 17-2001 and all other applicable wage orders, § 12 by failing to pay Ms. Villegas and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Failure to Pay Overtime Wages

Employers failed to pay overtime to Ms. Villegas and the other aggrieved employees, and they are entitled to the protections of California Labor Code. Specifically, California Labor Code §§ 510, 1194 and IWC Wage Order Nos. 1-2001, 17-2001 and all other applicable wage orders, § 3 require Employers to compensate Ms. Villegas and other aggrieved employees for all overtime,

which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Employers failed to compensate Ms. Villegas and other aggrieved employees for all overtime hours worked by, among other things, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay, by among other things, failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Ms. Villegas and other aggrieved employees to work off the clock; requiring, suffering, or permitting Ms. Villegas and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and implementing an unfair rounding policy that deprives overtime compensation to the aggrieved employees and failing to include this time in all hours worked; and other methods to be discovered.

Employers have refused to perform its obligations to compensate Ms. Villegas and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and IWC Wage Order Nos. 1-2001, 17-2001 and all other applicable wage orders, § 3.

IV. Failure to Timely Pay All Wages Earned

Pursuant to California Labor Code § 204, California employers must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Employers failed to pay Ms. Villegas and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Ms. Villegas and other aggrieved employees for work they performed off the clock, failing to pay them for bonuses to which they are entitled, illegally and inaccurately recording time in which Ms. Villegas and other aggrieved employees worked, failing to pay them overtime and minimum wages, and requiring them to work through their meal and rest periods without proper compensation and/or remuneration.

Employers knew that they were required to pay Ms. Villegas and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

V. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) work days.

Because Employers, among other things, requires Ms. Villegas and other aggrieved employees to work off the clock without compensation, fails to pay them overtime and minimum wages, and requires them to work through their meal and rest periods without proper compensation and/or remuneration, Employers have willfully failed and continue to fail to pay wages due to Ms. Villegas and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VI. Failure to Maintain Required Records

Employers have failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order Nos. 1-2001, 17-2001 and all other applicable wage orders, § 7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements that reflect all compensation and remuneration owed and due to them.

Employers have knowledge they were not providing its non-exempt employees with proper meal and rest periods, and that it fails to maintain records relating to sick pay accrued. Additionally, Employers paid Ms. Villegas and the other aggrieved employees their overtime compensation in cash and failed to accurately compensate them for this time. Employers have also failed to pay Ms. Villegas and other aggrieved employees minimum wages, as described herein.

VII. Failure to Furnish Accurate Itemized Wage Statements - AMENDED

Employers fail to provide Ms. Villegas and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the correct names and addresses of the legal entities which Ms. Villegas and other aggrieved employees, the inclusive dates of the period for which the employee is paid, in violation of California Labor Code § 226 and IWC Wage Order Wage Order Nos. 1-2001, 17-2001, and all other applicable wage orders, § 7.

In particular, the wage statements of Employers violates Labor Code § 226 on their face by, among other things, failing to provide the names and addresses of all of the Employers who employed Ms. Villegas and other aggrieved employees. Instead, only some of the Employer names are listed on the wage statements of Ms. Villegas and other aggrieved employees and do not contain all of the Employers addresses. Moreover, Employers are not providing Ms. Villegas and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. See, *Naranjo v. Spectrum Security Services, Inc.* (2022) California Supreme Court, Case Number: S58966. Employers require Ms. Villegas and other aggrieved employees to work off the clock without compensation and is not listed on the wage statements. Employers also failed to pay Ms. Villegas and other aggrieved employees' overtime and minimum wages, as described herein, rendering its wage statements incomplete and inaccurate.

Finally, Employer's wage statements failed to list the total hours available to Mr. Urquiza and the other aggrieved employees of their available hours of COVID 19 supplemental sick leave and all corresponding applicable rates of pay for any COVID 19 supplemental sick leave taken and/or a separate listing of COVID 19 supplemental paid sick leave that is different than sick leave or personal time off, all in violation of California Labor Code § 226, 246, 248.1, 248.2, 248.3 and 248.6, et seq. and applicable IWC Wage Orders.

VIII. California COVID-19 Supplemental Paid Sick Leave - AMENDED

As of March 29, 2021, Employers employ 26 or more aggrieved employees. As such, Employers are required to provide 80 hours of COVID-19 supplemental paid sick leave and compensate aggrieved employees at their regular rate of pay for supplemental sick leave, i.e. highest regular rate of pay, taking into consideration non-discretionary bonuses, etc. See, California Labor Code §248.1(b)(3)(A). Employers have an obligation to provide COVID-19 supplemental sick leave in addition to regular sick leave. See, California Labor Code §248.1(b)(2)(D).

Moreover, based upon the incorporation of California Labor Code §246 into California Labor Code §248.1(b)(2)(D), Employers are required to accurately reflect any offset and/or the current amount of COVID-19 supplemental sick leave available to the aggrieved employees. See, California Labor Code §248.1(b)(2)(D). Further, Employers are prohibited from requiring aggrieved employees from using any other paid or unpaid leave, paid time off, or vacation time provided by Employer before the aggrieved employees were provided, used or in lieu of COVID-19 supplemental paid sick leave. See, California Labor Code §248.1(b)(4). Employers are also in violation of California Labor Code §§248.2, 248.3 and 248.6 for the reasons provided herein from 2021 through 2022.

Here, Employers failed to provide the aggrieved employees with COVID-19 supplemental paid sick leave. Further, Employers failed to list and itemize COVID-19 supplemental paid sick leave on the wage statements for the other aggrieved employees and also failed to pay the aggrieved employees COVID-19 supplemental sick leave at their regular rate of pay. Employers also failed to provide their non-exempt employees of their rights under California law with regard to COVID-19 supplemental sick leave and hours relating thereto, and thus aggrieved employees were left in the dark as to if or how much COVID-19 supplemental paid sick leave was available to them.

DEMAND

Demand is hereby made that Employers shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Ms. Villegas and all other aggrieved employees employed by Employers at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that Employers shall agree to comply with all California labor laws and ensure that its hourly aggrieved employees are paid proper overtime compensation and given required meal and rest periods. In addition, the following demands are hereby made:

1. Employers shall agree to conduct a survey or interview of all current and former hourly aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of rest periods and meal periods each employee missed during their work shifts including, but not limited to second meal periods, and about discharging their duties, with the investigation to be completed within thirty (30) days.
2. Employers shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by Labor Code § 226.7.

3. Employers shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to §§ 510, 1194, 1198, and pursuant to all applicable wage orders.
4. Employers shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employers, and to begin providing uniforms to aggrieved employees. In addition, Employers shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.
5. Employers update their records and provided supplemental COVID-19 sick leave to the aggrieved employees, and if any aggrieved employee to any other type of leave or time off which was unpaid, Employers reimburse aggrieved employees accordingly.
6. Employers shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid pages.
7. Employers shall agree to pay all penalties and civil penalties due arising from the violations of the Labor Code and IWC wage order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to, penalties under Labor Code §§ 2699, 210, 225.5, 226.3, 1174.5, 1197.1, 1199 and Wage Order Nos. 1-2001, 17-2001§ 20 and all other applicable wage orders.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

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California Labor & Workforce Development Agency
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Thank you for your prompt attention to this matter.

Sincerely,

THE LAW OFFICE OF SCOTT ERNEST WHEELER

A large, stylized handwritten signature in black ink, appearing to read 'Scott E. Wheeler', is written over the printed name.

Scott E. Wheeler, Esq.