



September 2, 2020

Sender's e-mail:
awilliams@cdflaborlaw.com

VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Lynae McDaniel v. SFM, LLC - LWDA-CM-800196-20

To Whom It May Concern:

Employer SFM, LLC (hereinafter “Sprouts”) responds to the letter from Lynae McDaniel dated July 27, 2020, pursuant to Cal. Labor Code §§ 2699.3(c)(2)(A) *et seq.* such that ***no civil action may commence.***

First, Ms. McDaniel cannot recover civil penalties for the alleged violations of Labor Code sections 201, 202, 203, 226.7, 510, 512, and 1194 on behalf of herself or any allegedly aggrieved employee because those claims were settled and released in the matter of *Hernandez et al. v. SFM, LLC registered in California as SF Markets, LLC*, San Diego County Superior Court, Case Number 37-2016-00015169-CU-OE-CTL.¹

¹ As set forth in the settlement, “Released Claims” means all allegations and claims for civil penalties for violation of PAGA, as allowed by Labor Code Section 2698, *et seq.* made or that could have been made based on the facts and claims alleged in the complaints and amended complaints filed in the Case and corresponding Notices sent to the LWDA for the Case (the PAGA Letters), including but not limited to all remedies available for PAGA claims for: unpaid straight and overtime wages (including but not limited to those wages for hours worked “off the clock” and during meal periods), failure to provide reporting time pay, failure to pay split shift premium, unreimbursed business expenses (including but not limited to expenses for use of personal cellular phones or mobile devices, for tools and equipment, and for apparel), failure to provide personal protective equipment, failure to provide material terms of employment, failure to provide compliant meal periods and/or pay meal period premiums, failure to authorize and permit compliant rest periods and/or pay rest period premiums, failure to provide and maintain accurate wage statement, failure to pay timely wages at termination of employment, failure to provide suitable seating, and violations of and PAGA claims for: civil and statutory penalties, including but not limited to violations of and claims arising under California law, *Labor Code*

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Ms. McDaniel's employment ended on November 14, 2019. The *Hernandez* settlement, which is public record, includes a release PAGA claims through November 13, 2019, and Ms. McDaniel's accepted and cashed her settlement check. See Exhibit 1. Thus, Ms. McDaniel's alleged PAGA claims based on the foregoing are barred as a matter of law. See *Robinson v. S. Ctys. Oil Co.*, No. A158791, 2020 WL 4696742, at *3 (Cal. Ct. App. Aug. 13, 2020) ("The *Gutierrez* settlement and resulting judgment finally resolved the LWDA's claims with respect to the violations alleged in that action... Accordingly, the doctrine of claim preclusion bars relitigation of the claim for civil penalties based on the Labor Code violations resolved in *Gutierrez*...[and] the preclusion of Robinson's claims for the period during which he was employed by Southern County deprives him of standing to assert claims arising exclusively after he was so employed.); *Starks v. Vortex Indus., Inc.*, 2020 WL 5015248, at *12 (Cal. Ct. App. Aug. 25, 2020) ("the state is bound by the Starks judgment pursuant to its acceptance of the benefits of that judgment. The LWDA, like other parties, cannot "take the money *and* continue the lawsuit," either directly or through an agent. Because Herrera's PAGA claim, in substance, is encompassed within the Starks judgment, its maintenance is barred by the LWDA's acceptance of the benefits of the Starks judgment.")

Likewise, Ms. McDaniel's alleged violations of Labor Code sections 232.5, 1102.5, 6310 and 6311 fail because they are unique and personal to her. They do not form the basis of a representative action and PAGA claims may not be asserted on an individual basis. *Khan v. Dunn-Edwards Corp.*, 19 Cal. App. 5th 804, 810, (2018), review denied (Apr. 18, 2018) citing *Tanguilig v. Bloomingdale's, Inc.*, 5 Cal.App.5th 665, 676 (2016). ("PAGA action is only a representative action. 'Permitting pursuit of only individual penalties appears inconsistent with PAGA's objectives.'")

sections 201-204, 210, 218, 218.5, 218.6, 221-223, 226, 226.2, 226.3, 226.7, 227.3, 246, 246.5, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197-1198, 1198.5, 2698 et seq., 2751, 2802, 2810.5, 6401, 6403; the applicable Industrial Welfare Commission Wage Orders; Cal. Code Regs. Title 8, § 11070; and the *Business & Professions Code* §17200, et seq. as it relates to the underlying *Labor Code* claims referenced above and permissible pursuant to *Labor Code* Section 2699, and California *Code of Civil Procedure* § 1021.5 to the extent permissible pursuant to *Labor Code* Section 2699, interest, attorneys' fees and costs, during the Covered Period.

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Based on the foregoing, ***no civil action for PAGA penalties*** may commence. Please contact me should you have any questions regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Amy S. Williams', written over a faint yellow horizontal line.

Amy S. Williams
CAROTHERS DiSANTE & FREUDENBERGER LLP

EXHIBIT 1

ORIGINAL DOCUMENT PRINTED ON CHEMICAL RESISTANT PAPER WITH MICROPRESSURE PRINTING

Hernandez et al v SFM LLC
PO Box 26170
Santa Ana, CA 92799
(888) 554-3378

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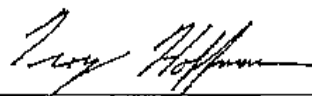
45480403

11/20/2019

PAY Two and 52/100 Dollars \$ 2.52

PAY TO THE ORDER OF Lynae R McDaniel
6350 CELESTITE AVE
RANCHO CUCAMONGA, CA 91701-8101

 SIMID 20399


Void After May 18, 2020

45480403 325084426 5347479038

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