

August 17, 2020

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VIA ONLINE SUBMISSION

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

Re: Anne Hawkes v. SF Markets, LLC
LWDA-CM-796953-20 –
Employer Response

To Whom It May Concern:

Employer SFM, LLC (hereinafter “Sprouts”) responds to the letter from Anne Hawkes dated July 14, 2020, pursuant to Cal. Labor Code §§ 2699.3(c)(2)(A) *et. seq.* such that ***no civil action may commence.***

First, Ms. Hawkes cannot recover civil penalties for the alleged violations of Labor Code sections 201, 203, 204, 204(b), 226, 1194, 1198 and IWC Wage Order No. 7-2001 on behalf of 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 Ms. Hawkes employment

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

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ended on November 1, 2019. The *Hernandez* settlement was provided to the LWDA and subsequently approved by the court on November 13, 2019, and so includes a release PAGA claims through that date. Thus, Ms. Hawkes' 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.")

Ms. Hawkes' claims for the failure to provide her personnel file (§ 1198.5) and payroll records (§ 226(c)) additionally fail because Ms. Hawkes never authorized their release. On or about February 20, 2020, Sprouts received a written demand from Potter Handy, LLP requesting that Sprouts provide it with Ms. Hawkes personnel file and payroll records. It is well settled that before an employer responds to such a demand, the employer may take reasonable steps to verify the identity of a current or former employee or his or her authorized representative. See Lab. Code § 1198.5(e) and 226(c). On February 27, 2020, Sprouts replied that it "will promptly provide copies of Ms. Hawkes' personnel and payroll records upon receipt of a signed authorization from Ms. Hawkes requesting us to do so." No such authorization was ever provided or received. Thus, Ms. Hawkes cannot state a claim for violation of Labor Code sections 1198.5 or 226(c).

Lastly, Ms. Hawkes' alleged violations of Labor Code sections 98.6 and 1102.5 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.'")

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* 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,



Amy S. Williams
CAROTHERS DiSANTE & FREUDENBERGER LLP