

July 20, 2020

Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

*Filed Online and Courtesy Copy Delivered
via Certified Mail with \$75 Check*

Re: Written Notice – Private Attorney General Act (“PAGA”) –
California Labor Code § 2698 et seq.
Hernandez v. Wonderful Citrus Packing LLC

PAGA Administrator:

Notice is hereby provided that, pursuant to California *Labor Code* §2699.3, Garciela Gray Hernandez (“Employee”) contends that, Wonderful Citrus Packing LLC (“Wonderful Citrus”) has violated, and continues to violate, provisions of the California *Labor Code* and wage orders promulgated by the Industrial Welfare Commission (“IWC Wage Order”), including, but not limited to, California *Labor Code* §§ 200, 201-203, 226, 226(a), 226.7, 512, 1194, 1198, 6720, and the applicable wage order.

In accordance with the required notice under California *Labor Code* § 2699.3 of the Private Attorney General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”).

Employee was a non-exempt, hourly employee of Wonderful Citrus for the past seven years until her date of termination on May 12, 2020. Employee was hired by Wonderful Citrus and worked as a “Laborer” at the Indio facility. Employee made approximately \$15 an hour.

Wonderful Citrus is a Delaware limited liability company that does business in California. Wonderful Citrus is the largest fresh citrus grower in the western United States.

Employee and aggrieved employees seek unpaid wages, penalties and other compensation from Wonderful Citrus for the relevant time period because Wonderful Citrus:

1. Failed to pay Employee and other aggrieved employees for all hours worked (California *Labor Code* §§ 1194, 1194.2, 1197 & 1198 and Wage Order section 12);
2. Failed to provide Employee and other aggrieved employees with proper meal breaks (California *Labor Code* §§226, 226.7, 512, 1198 and IWC Wage Order section 12);
3. Failed to provide Employee and other aggrieved employees with rest breaks (California *Labor Code* §§226, 226.7, 512, 1198 and IWC Wage Order section 12);
4. Failed to provide Employee and other aggrieved employees with proper wage statements (California *Labor Code* § 226(a));
5. Failed to pay Employee and other aggrieved employees all final wages in a timely fashion (California *Labor Code* §§201-203);
6. Failed to minimize excessive indoor heat (California *Labor Code* § 6720); and
7. Failed to provide Employee and other aggrieved employees with adequate seating (Wage Order section 14 and California *Labor Code* § 6720).

Employee is an “aggrieved employee” as defined in California *Labor Code* § 2699, subdivision (a) and brings this action on behalf of herself and all other aggrieved employees of Wonderful Citrus. Employee, also on behalf of herself and all other aggrieved employees, seeks penalties under PAGA for Wonderful Citrus’ violations.

Below please find the relevant facts and legal theories to support the aforementioned violations. In addition, a copy of the Complaint is attached hereto.

Failure to Pay for All Hours Worked

Wonderful Citrus violated California *Labor Code* §§ 510, 512, 1182.12, 1194, 1197, 1197.1, 1198 by failing to pay Employee and other aggrieved employees at least the minimum wage for all hours worked as detailed below. As a matter of policy and/or practice, Wonderful Citrus failed to compensate Employee and other aggrieved employees for all hours worked and thus, failed to pay minimum wage for each hour Employee and other aggrieved employees worked in violation of California law.

Pursuant to a uniform policy originated by Wonderful Citrus, all hourly employees are subject to undergo a drug test. Hourly employees were and are subject to an unpaid drug test lasting approximately three (3) hours.

By way of example, on April 13, 2020, Employee was required to drive to Premier Occupational Clinic in Indio, and spent approximately three (3) hours for a mandatory drug test. This was done “off-the-clock.”

Thus, at the discretion and control of Wonderful Citrus and solely for their benefit, Employee and other aggrieved employees were and are required to have drug testing on their own time. This uncompensated time was necessary to the employee's primary work and done solely for Wonderful Citrus’ benefit.

Accordingly, Employee now seeks civil penalties for these *Labor Code* violations that Wonderful Citrus has committed against her and aggrieved employees.

Failure to Provide Compliant Rest Breaks

At all times, relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

Employee is informed and believes, and based thereon alleges, that Wonderful Citrus failed to effectively communicate California rest period requirements to Employee and other aggrieved employees. Employee is further informed and believes and based thereon alleges that throughout the relevant time period Wonderful Citrus failed to provide rest periods.

Employee alleges that she would work between four (4) and 13 (thirteen) hours per shift, however, was only ever provided with one rest break on any given shift.

Employee alleges that Wonderful Citrus regularly:

- a. Failed to provide paid rest periods of ten (10) minutes during which Employee and other aggrieved employees were relieved of all duty for each four (4) hours of work and able to take rest periods within the middle of the shift; and
- b. Failed to pay which Employee and other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

Employee is further informed and believes, and based thereon alleges, that as a matter of policy and/or practice, Wonderful Citrus routinely failed to provide Employee and other aggrieved employees with rest periods as required by law.

Failure to Provide Compliant Meal Breaks

Employee alleges that meal breaks were short as a result of waiting in line (three to five minutes) to clock out, thereby depriving Employee and other aggrieved employees of the full meal break as required. Employee also alleges that meal breaks were only provided when time permitted, and were sometimes taken after the fifth hour

Employee alleges that Wonderful Citrus regularly:

- a. Failed to provide Employee and other aggrieved employees with a first meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than five (5) hours;
- b. Failed to provide Employee and other aggrieved employees with a second meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than ten (10) hours per day;
- c. Failed to pay Employee and other aggrieved employees one hour of pay at their regular rate of compensation for each workday that a meal period was not provided; and
- d. Failed to accurately record all meal periods.

Termination/Final Wages

Wonderful Citrus willfully and knowingly failed to pay Employee and other aggrieved employees, upon termination of employment, all accrued compensation.

Specifically, Employee was entitled to compensation for all time spent “off-the-clock” and for meal and rest break premiums.

Wonderful Citrus’ failure to pay for all wages due prior to termination constitutes violations of California *Labor Code* §§ 201-203.

Wage Statements

Wonderful Citrus violated California *Labor Code* § 226(a) which provides that, “(a) Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her 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 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission (5) net wages earned...(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...”

This is due to the meal/rest break violations, and failure to pay all wages owed to Employee and other aggrieved employees.

Excessive Indoor Heat

Wonderful Citrus failed to comply with California *Labor Code* §§ 6720, 226.7 and the applicable Wage Order section 15 because it provided employees with an excessively hot indoor

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working environment. Wonderful Citrus failed to implement indoor heat- related standards and increased employees' risk of heat illnesses. Employee and other aggrieved employees who worked in the warehouse had limited areas to get relief from the heat.

Employee alleges that the Indio facility was excessively hot with temperatures often reaching over 100 degrees Fahrenheit.

Adequate Seating

At all times, relevant hereto, the applicable wage order section 14(a), requires that “[a]ll working employees be provided with suitable seats when the nature of the work reasonably permits the use of seats.” Section 14 (b) requires that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Wonderful Citrus willfully and knowingly failed to provide Employee and other aggrieved employees with suitable seats, although the nature of work required standing for substantial periods of time.

California *Labor Code* § 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. By failing and refusing to provide seating to Employee and other aggrieved employees in violation of the applicable Wage Order Section 14, Wonderful Citrus has violated and continue to violate California *Labor Code* § 1198.

Conclusion

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Riverside County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Wonderful Citrus. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP


Marcus J. Bradley, Esq.

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Enclosures – as stated above.

cc: AGENT FOR SERVICE OF PROCESS FOR WONDERFUL CITRUS
CT CORPORATION
818 WEST SEVENTH STREET, SUITE 930
LOS ANGELES CA 90017

WONDERFUL CITRUS PACKING LLC
11444 W OLYMPIC BLVD 10TH FL
LOS ANGELES CA 90064