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September 25, 2020

For Online Filing:

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

Re: *Garcia v. Kehe Distributors, Inc., et al.*

Dear Labor Commissioner,

As counsel for Mariano Garcia ("Plaintiff"), I am writing to provide you and the following "employers" notice pursuant to California Labor Code section 2699.3:

Kehe Distributors, Inc.
1245 E. Diehl Rd., Suite 200
Naperville, IL 60563

Brandon Barnholt
1245 E. Diehl Rd., Suite 200
Naperville, IL 60563

Justin A. Mallot
1245 E. Diehl Rd., Suite 200
Naperville, IL 60563

Tim Wiggins
1245 E. Diehl Rd., Suite 200
Naperville, IL 60563

We are setting forth the "facts and theories" to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Kehe Distributors, Inc., Brandon Barnholt, Justin A. Mallot, and Tim Wiggins ("Defendants"). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all non-exempt employees who have worked, or continue to work, for Defendants in California from one year prior to this notice to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act ("PAGA") claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018)



(finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

Plaintiff worked for Defendants from approximately March 2017 to May 2018 and then again from approximately June 2020 to July 2020 as a non-exempt employee. Aggrieved Employees also worked for Defendants as non-exempt employees. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week, incurring overtime and double time. Plaintiff and Aggrieved Employees were also not authorized and permitted to take all meal and rest periods they were entitled to and were paid meal and rest period premiums for some of these violations. Defendants did not correctly incorporate the value of the non-discretionary remuneration, such as shift differentials, job premiums, pick incentives, retention bonuses, etc., into Plaintiff's and Aggrieved Employees' regular rates of pay when calculating overtime, double time, meal and rest period premiums, or sick leave pay.

Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take all uninterrupted thirty (30) minute meal periods and ten (10) minute rest periods owed to them, including second meal periods and third rest periods when they worked over ten hours in one shift. Defendants failed to correctly incorporate the value of non-discretionary remuneration for the purpose of calculating Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying meal or rest period premiums.

Defendants failed to provide Plaintiff and Aggrieved Employees with legally compliant paystubs. The paystubs Defendants issued did not accurately itemize the total hours worked, accurate overtime rates of pay, the pay periods for which the amounts were earned, accurate missed meal and rest period premiums owed, and accurate gross and net wages earned. As a result, Plaintiff and Aggrieved Employees were not able to determine the total wages owed to them from their paystubs alone.

As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all overtime and double time wages, paid sick time, and meal and rest period premiums owed to them.

Brandon Barnholt, Justin A. Mallot, and Tim Wiggins are and/or were officers, directors, shareholders, and/or managing agents of Kehe Distributors, Inc. responsible for the violations stated herein as they are and/or were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead.

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B. ALLEGATIONS AND CHARGES

Count One – Violation of Labor Code §§ 510, 1194; IWC Wage Order 9, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count Two – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement 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 . . .” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

Count Three – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

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Count Four – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants agents, violated Plaintiff and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Brandon Barnholt, Justin A. Mallot, and Tim Wiggins are and/or were officers, directors, shareholders, and/or managing agents of Kehe Distributors, Inc. responsible for the violations stated herein as they are and/or were in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count Five - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 9, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 9, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 9 section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay meal period premiums at the appropriate rate for their failure to provide meal periods. This was in violation of the law.

Count Six – Violation of Labor Code § 226.7 and Wage Order No. 9, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 9 section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay rest period premiums at the appropriate rate for their failure to provide rest periods. This was in violation of the law.



Count Seven – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked, effective July 1, 2015. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Defendants failed to abide by the HWHFA when it failed to pay sick leave at the regular rate of pay. This was in violation of the law.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____

Justin P. Rodriguez

JPR:bb

cc: Client via e-mail

1 *Garcia v. Kehe Distributors, Inc., et al.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On September 25, 2020, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

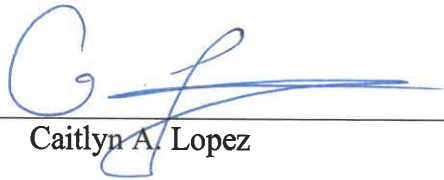
9 Kehe Distributors, Inc. 10 1245 E. Diehl Rd., Suite 200 11 Naperville, IL 60563	Brandon Barnholt 1245 E. Diehl Rd., Suite 200 Naperville, IL 60563
12 Justin A. Mallot 13 1245 E. Diehl Rd., Suite 200 14 Naperville, IL 60563	Tim Wiggins 1245 E. Diehl Rd., Suite 200 Naperville, IL 60563

16 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
17 and processing of correspondence for mailing with the United States Postal
18 Service and that each day's mail is deposited with the United States Postal
19 Service that same day in the ordinary course of business. On the date set forth
20 above, I served the aforementioned document(s) on the parties in said action by
21 placing a true copy thereof enclosed in a sealed envelope with postage thereon
22 fully prepaid, for collection and mailing on this date, following ordinary business
23 practices, at Elk Grove, California, addressed as set forth above.

24 [] [By Personal Service] By personally delivering a true copy thereof to the office
25 of the addressee above.

26 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
27 personally delivered via the following overnight courier service:_____.

28 I declare under penalty of perjury under the laws of the State of California that the foregoing
is true and correct, and that this declaration was executed on September 25, 2020, at Elk Grove,
California.


Caitlyn A. Lopez