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Via Certified U.S. Postal Mail

September 18, 2020

Shamrock Foods Company
3900 E Camelback Road, Ste. 300
Phoenix, AZ 85018

W. Kent McClelland
3900 E Camelback Road, Ste. 300
Phoenix, AZ 85018

Shamrock Foods Company
12400 Riverside Drive
Eastvale, CA 91757

John Fernandes
856 National Drive
Sacramento, CA 95834

CT Corporation System
Attn: Amanda Garcia, Vivian Imperial, Gladys Aguilera, Gabriela Sanchez, Daisy Montenegro, Beatriz Casarez-Barrientez, Carlos Paz, Alberto Damonte, Jessie Gastelum, Peter Cayetano
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Labor Code Section 2699 Notice by Aggrieved Employee

This constitutes statutory notice pursuant to Labor Code section 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act (PAGA), Cal. Labor Code section 2699, et seq. Please consider this a request for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against Shamrock Foods Company and its agents, managers and supervisors, including Operations Manager John Fernandes (collectively "Shamrock") for violations of the California Labor Code described below. I am writing on behalf of Glenn Fite, an aggrieved employee represented by this law firm

(hereinafter “Aggrieved Plaintiff”) who seeks to assert a PAGA claim on behalf of the State of California and all other current and former employees who have been employed by Shamrock in California.

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiff, the state and other current or former employees under PAGA (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former), all timekeeping records, all rest and meal period records, all records detailing employee duties and responsibilities, all records of customers of the facilities that include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or nonpayment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code sections 210, 558, and 1197.1, and other provisions of the Labor Code, please consider this a notice to Shamrock’s owners, supervisors, managers, agents and all other persons acting on behalf of Shamrock and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. As used herein, “Shamrock” refers to all liable persons and entities, including owners, supervisors, managers, agents, and any other person acting on behalf of Shamrock who “caused” the violations at issue, including John Fernandes, who was Aggrieved Plaintiff’s direct supervisor.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Shamrock to pay current and former California non-exempt employees in conformance with the California Labor Code and Wage Orders. At the core of Shamrock’s violations is a policy of failing to keep accurate time and payroll records; requiring, suffering or permitting employees to perform work during scheduled rest periods; failing to provide timely, complete and uninterrupted meal periods free of duty; failing to pay rest and meal period premiums to which employees are entitled for being denied lawful rest and meal periods; failing to provide accurate wage statements and failing to pay all wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt, warehouse order selectors at Shamrock.

Liability under the Private Attorneys General Act (Cal. Labor Code sections 2698 et seq.) may be based on a wide variety of Labor Code provisions, including but not limited to: sections 201, 202, 203, 210, 216, 218, 218.6, 221, 223, 225, 226, 226.7, 510, 512, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC Wage Orders, 2699 et seq. and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the policies described above and the violations set forth below relate to all the non-exempt employees employed at Shamrock’s locations and worksites in California, and include:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code sections 201, 202, 221, 510, 1194, 558, 1197.1 and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, by requiring, suffering or permitting employees to work without compensation, by unlawfully rounding employee time, by not compensating for off-the clock time, by not compensating for certain activities such as work performed (including selecting and fulfilling orders) during meal breaks, and by failing to pay for all hours worked within the meaning of the wage orders.
2. Failure to properly provide or authorize and permit all paid rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code sections 226.7, 512 and Wage Orders. Specifically, Shamrock uses an incentivized pay system that discourages aggrieved employees from taking their lawful rest breaks to maintain an above average productivity rate. For example, Shamrock pays a base hourly rate, which can be approximately increased up to 50% of the hourly base rate based on the actual total number of cases scanned by the warehouse order selector during each hour of work. The base rate is based on an hourly average of 130 cases per hour. However, aggrieved employees are pressured to excel this average to attain a higher rate of pay per hour. This incentivized pay system discourages employees from taking their rest breaks as it decreases their average rate of cases scanned per hour, and Shamrock as well as all supervisors and managers, know and permit employees to engage in such a practice without compensating employees for an extra hour at their regular rate of pay in lieu of a missed rest break, or premium pay.
3. Failure to provide timely meal breaks of at least 30-minutes of uninterrupted, off-duty time, and failure to provide all meal breaks to which workers are entitled for shifts greater than ten and twelve hours; and failure to pay meal break premiums for missed, interrupted or incomplete meal breaks. Aggrieved employees were incentivized by Shamrock's pay system to work through part or all of their meal periods or otherwise perform off-the-clock work. Employees also experienced meal periods that were interrupted by supervisors and managers and were provided late. These practices violate Cal. Labor Code sections 226.7, 512 and the Wage Orders.
4. As a result of the above violations, Shamrock failed to keep accurate time records of hours worked by employees and failed to provide accurate wage statements that failed to include the following accurate information: gross wages earned, total hours worked by the employee, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The failure to provide such accurate information in wage statements violates Labor Code sections 226, 1174 and the Wage Orders.
5. Shamrock failed to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code sections 201, 202, 203, and 256 since it systematically failed to pay all wages earned and failed to pay all additional wages in lieu of providing all rest and meal periods.
6. Lastly, Shamrock failed to produce wage statements in response to Aggrieved Plaintiff's request pursuant to Labor Code section 226.

The above violations do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code. If no action is taken within 60 days, we will assume that we may pursue this action under the theories described above against the listed and described entities and their managers, agents, owners and other liable persons and entities, including W. Kent McClelland and John Fernandes (pursuant to section 210, 558 and 1197.1 (and other provisions)).

Aggrieved Plaintiff may be contacted through our office: Mallison & Martinez Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

Sincerely,

MALLISON & MARTINEZ

A handwritten signature in black ink, appearing to be 'Liliana Garcia', written in a cursive style.

Liliana Garcia, Esq.

Cc: Andrew J. Sommer, Esq., asommer@connmaciel.com