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March 12, 2021

Sent By Certified Mail to Daylight Foods, Inc.

Submitted Via Online to Labor and Workforce Development Agency

Daylight Foods, Inc.
600 Vista Way
Milpitas, California 95035

600 Vista Way
Milpitas, California 95035

New Address:
30200 Whipple Road
Union City, California 94587

**Labor and Workforce Development
Agency**
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(415) 703-4810

**Chris Vlahopoulitis Agent for Service of
Process for Daylight Foods, Inc.**

**PRIVATE ATTORNEY GENERAL ACT (PAGA) NOTICE
PURSUANT TO LABOR CODE § 2699**

Re: Notice Pursuant to California Labor Code Section 2699
Violations of California Labor Code Sections 201, 202, 203, 226(a) 1-2, 4-5, 9, 226.3,
226.7, 510, 512, 558, 1194
Violations of California Labor Code Section 1198 (Industrial Welfare Commission Order
Nos. 3-2001, 7-2001, 8-2001, 9-2001, 13-2001, 14-2001 (“Wage Orders 1, 3, 4, 7, 8, 9, 13
and 14”), Sections 3, 7, 11 and 12
Labor and Workforce Development Agency Right to Investigate and Issue a Citation (Lab.
Code § 2699.3)
***Maximillion Archuleta v. Daylight Foods, Inc. et al.*: LWDA-CM-822894-21**

Dear Daylight Foods, Inc. and PAGA Administrator:

This letter is issued pursuant to Labor Code § 2698, et seq. (Specifically Labor Code § 2699(f)), which provides notice to the PAGA Administrator and Daylight Foods, Inc. by Maximillion Archuleta (“Mr. Archuleta” or “Plaintiff”) on behalf of all aggrieved current and aggrieved former similarly situated employees of Daylight Foods, Inc. (“DFI”) collectively referred to herein as “Defendants” or “Defendant” in California for all California nonexempt employees, a private right of action under the Private Attorney General Act (PAGA) of 2004. As a prerequisite to filing this private action in superior court, Mr. Archuleta is required to provide notice by certified mail to the Labor and Workforce Development Agency and the employers regarding each violation, along with facts and theories supporting each violation as mentioned below. (Labor Code § 2699.3) If you have any questions regarding this letter, please contact Armond M. Jackson, Esq. at Jackson APC at 949-281-6857 or via email at ajackson@jacksonapc.com.

Facts and Theories

DFI is a food supplier that sources food from farms to grocers and restaurants. This letter encompasses violations for the California nonexempt employees working at DFI.

Mr. Archuleta worked as a general laborer to work for DFI until around March 14, 2020 as a non-exempt employee that performed job duties such as pulling merchandise for the customer on behalf of DFI. Throughout Mr. Archuleta’s employment, he worked 5, 6, 10 hour plus shifts and was not authorized or permitted to take a uninterrupted 30-minute meal break each five hours at a reasonably practicable time nor was he authorized or permitted to take a second or third meal break which he was entitled to on the shifts when he worked above 10 and 12 hours shifts about 4 to 5 time each week. During Mr. Archuleta’s meal period, him and similarly situated employees was required to walk across warehouse and then stand in line to complete time recording sheets causing shortened and interrupted meal periods. Moreover, throughout Mr. Archuleta’s employment, he worked above 4 hour plus shifts and was not authorized or permitted to take a uninterrupted 10-minute rest break each four hours at a reasonably practicable time. Also, during rest periods, they were interrupted and short because Mr. Archuleta and similarly situated employees was required to walk across warehouse and then stand in line to complete time recording sheets.

Defendants did not compensate Plaintiff with his premium wages when he was subjected to late, short, missed, on-call, interrupted, on-premises or missed meal breaks and rest breaks in violation of California Labor Code section 226.7, 512, and Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Sections 11 and 12 approximately 10 to 20 shifts each month. Other similarly situated employees deployed to work at Defendants were under the same conditions as Plaintiff.

Moreover, Defendants failed to incorporate Plaintiff’s premium wages and hours worth of work on his wage statements as required by California Labor Code section 226(a) 1-2, 4-5, 8 and 9. All other similarly situated employees were subjected to the same working conditions as

Plaintiff, such as not being provided with their entitled meal breaks and rest breaks as stated above or paid premium wages nor were the hours worth of work or premium wages disclosed on their wage statements.

Moreover, Mr. Archuleta was required to walk across warehouse and then stand in line to complete time recording sheets during his meal break interrupting his meal break and resulting in off-the clock work. Moreover, Plaintiff and other similarly situated employees were required to arrive at Defendants worksite but wait in long lines for above 5 and 10 minutes before being permitted to clock in. Additionally, Plaintiff and similarly situated employees had to engage in post-shift off-the-clock work after being required to clock out after the end of their shift. These practices resulted in violations of California Labor Code sections 510, 1194 and Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 3.

Lastly, at the time of Mr. Archuleta's termination, Defendants refused to pay Mr. Archuleta his entitled wages and premium wages. Mr. Archuleta believes that Defendants do not pay premium wages to any of the similarly situated employees at the time of termination.

By virtue of requiring Mr. Archuleta to work off-the-clock at DFI, not authorizing or permitting Mr. Archuleta and all other similarly situated employees to take their entitled meal breaks and rest breaks, failing to incorporate hours worked and wages earned on the itemized wage statements disclosing total hours worked, total gross wages earned, net wages earned, hours worked at the applicable hourly rate and deductions that should have been taken out, and failing to pay out wages and premium wages at termination, Defendants are violating California Labor Code Sections 201, 202, 203, 226(a) 1-2, 4-5, 9, 226.3, 510, 512, 1194 and 226.7, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Sections 3, 7, 11 and 12.

Violation of California Labor Code Section 203

An employer may not willfully fail to pay any wages owed to an employee who is either discharged or quits. If the employer does fail to pay its employees upon separation of employment, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. (See Lab. Code §203) Here, Defendants did not compensate Mr. Archuleta and does not compensate other similarly situated employees for the earned wages and premium wages at the time of termination, acquittal or resignation or end of employment.

Violation of California Labor Code § 210

Labor Code section 210, an employer may not fail to pay the wages of each employee. Here, Defendants failed to pay for all hours worked due to requiring employees to work off-the-clock, engage in post-shift off-the-clock work, not being permitted to clock-in until after having to wait in long lines at the worksite and being required to wait in lines to fill out time sheets during off-the-clock meal breaks. These unpaid working activities were above 5 and 10 minutes at a time.

Violation of California Labor Code § 221

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. Again, here, Defendants failed to pay for all hours worked due to requiring employees to work off-the-clock, engage in post-shift off-the-clock work, not being permitted to clock-in until after having to wait in long lines at the worksite and being required to wait in lines to fill out time sheets during off-the-clock meal breaks. These unpaid working activities were above 5 and 10 minutes at a time.

Violation of California Labor Code § 226(a)

Labor Code § 226 (a) requires employers to provide “accurate itemized statement in writing” each pay period that includes nine categories of information. These categories include (1) gross wages earned, (2) total hours worked, (4) deductions taken, (5) net wages earned, (8) name and address of the legal entity 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. (See Labor Code §226, subsection (a)) Any employer who has violated California Labor Code Section 226(a) will also be subject to penalties under California Labor Code Section 226.3. These records must be maintained for a period of at least three years. It is Mr. Archuleta ’s contention that Defendants are in violation of the following California Labor Codes.

Violation of 226 (a)(1)

Section a (1) requires gross wages to be inserted on an employee’s paystubs. Mr. Archuleta and other similarly situated employees’ paystubs did not accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Mr. Archuleta and other similarly situated employees worked off-the-clock and during their entitled meal periods and rest periods but Defendants did not compensate them for that extra hour worth of work while off-the-clock nor disclosed or recorded the extra hour worth of gross wages earned on their paystub for failing to provide the entitled meal breaks and rest breaks.

Violation of 226 (a)(2)

Section a (2) requires the total hours worked by the employee to be inserted on an employee’s paystubs. Mr. Archuleta and other similarly situated employees’ paystubs did not accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Mr. Archuleta and other similarly situated employees worked off-the-clock and during their entitled meal periods and rest periods but Defendants did not compensate them for that extra hour worth of work while off-the-clock nor disclosed or recorded the extra hour worth of gross wages earned on their paystub for failing to provide the entitled meal breaks and rest breaks.

Violation of 226 (a)(4)

Section a (4) requires all deductions out of the employees’ wages to be inserted on an employee’s paystubs. Mr. Archuleta and other similarly situated employees’ paystubs did not

accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Mr. Archuleta and other similarly situated employees worked off-the-clock and during their entitled meal periods and rest periods but Defendants did not compensate them for that extra hour worth of work while off-the-clock nor disclosed or recorded the extra hour worth of gross wages earned on their paystub for failing to provide the entitled meal breaks and rest breaks.

Violation of 226 (a)(5)

Section a (5) requires net wages to be inserted on an employee's paystubs. Mr. Archuleta and other similarly situated employees' paystubs did not accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Mr. Archuleta and other similarly situated employees worked off-the-clock and during their entitled meal periods and rest periods but Defendants did not compensate them for that extra hour worth of work while off-the-clock nor disclosed or recorded the extra hour worth of gross wages earned on their paystub for failing to provide the entitled meal breaks and rest breaks.

Violation of 226 (a)(9)

Section a (9) requires all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Archuleta and other similarly situated employees' paystubs did not accurately reflect their gross wages earned by virtue of excluding hours worked and wages earned because Mr. Archuleta and other similarly situated employees worked off-the-clock and during their entitled meal periods and rest periods but Defendants did not compensate them for that extra hour worth of work while off-the-clock nor disclosed or recorded the extra hour worth of gross wages earned on their paystub for failing to provide the entitled meal breaks and rest breaks.

Violation of California Labor Code Sections 201, 202, 203, 226.7, 510, 512, 1194, 1198, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Sections, 3, 7, 11 and 12

An employer must provide meal periods and rest periods pursuant to an applicable order of the Industrial Welfare Commission. (See Lab. Code §226.7, 512)

Under Labor Code § 1198 an employer is required to comply with the standard conditions of labor required in the orders set by the Industrial Welfare Commission, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14.

Under these circumstances, Mr. Archuleta's position at Defendants falls within Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14 as Defendants employed Mr. Archuleta as a non-exempt employee classified as an employee. Thus below all sections and subsections that pertain to California Wage Orders 1 and 4 are applicable to Mr. Archuleta and all similarly situated aggrieved employees within these Wage Orders were employed or remain employed by Defendants.

California Labor Code sections 226.7, 512, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 11 states no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an —on duty meal period and counted as time worked. An —on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Mr. Archuleta and other similarly situated employees did not receive their entitled uninterrupted meal periods during their employment at Defendants while regularly working above 5 and 10 hour shifts. Moreover, Mr. Archuleta and other similarly situated employees were not provided with their meal periods in the middle of each work period as required and reasonably practicable as stated above subjected to on-premises, on-call, short, interrupted, missed or late meal periods. Nor were they compensated for working through their meal periods or being provided with meal periods in violation of California Labor Code Section 226.7, 512 and Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 11.

California Labor Code sections 226.7, 512, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 12 states every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided that were short, interrupted, on-premises, on-call, late or not taken at all.

Plaintiff and other similarly situated employees did not receive their entitled uninterrupted rest periods and meal breaks during their employment at Defendants while regularly working above 4, 5, 6, 7.5, 10 and 12 hour shifts.

California Labor Code Section 510, and 1194, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 3

Section 3 lays out the requirements for overtime pay applicable to employees working in restaurants and all similar establishments such as The Company. If an employee works in excess of eight (8) hours in any one day, or over forty (40) hours in one week, those hours must be paid

at the rate of one and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours and up until twelve (12) hours in any day. Any hour worked in excess of 12 hours in any workday is to be paid at the rate of double the employee's regular rate of pay.

Moreover, if any employee works (7) consecutive days, the employee shall be paid one and one-half (1.5) times his or her regular pay for the first eight (8) hours. Any hours worked in excess of eight (8) hours on the seventh consecutive day must be paid at twice the employee's regular rate of pay.

Violation of California Labor Code Section 510

Work in excess of eight hours in one workday and/or 40 hours in one workweek, and the first eight hours on the seventh day of work in any workweek must be compensated at no less than one and one-half times the employee's regular rate of compensation. (See Lab. Code §510) "Double time" required after twelve hours in any workday, after eight hours on the seventh day of work. Plaintiffs and other similarly situated employees were not paid any overtime for hours worked in excess of 8 hours per day or forty hours per week because they worked through shifts above 8 hours per day and 40 hours per week and not paid overtime rates and minimum wage rates for off-the-clock and on-the-clock work. The employees were never provided with overtime and minimum wage compensation for this time. Moreover, Defendant provided performance based bonuses and incentive payments but failed to include the correct overtime rates incorporating the bonuses into their compensation resulting in underpayment.

Violation of California Labor Code Section 558

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in addition to recover unpaid wages. (See Lab. Code §558)

Violation of California Labor Code Section 1194

Any employee receiving less than the legal minimum wage or overtime compensation applicable to the employee is entitled to recover, in a civil action, the unpaid balance of the full amount of the minimum wage or overtime compensation including interest, reasonable attorney's fees, and costs of suit. (See Lab. Code §1194) Plaintiff and other similarly situated employees were not paid all overtime and minimum wages for all hours worked including those hours in excess of 8 hours per day or forty hours per week because they worked overtime hours not paid at these overtime rates due to failing to pay off-the-clock work.

Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section -7- Records

Section 7 sets out the requirements for the maintenance of employee records by an employer. Subsection (A) requires employers to "keep accurate information with respect to each

employee” regarding identification information, including their “[f]ull name, home address, occupation and social security number,” “[time records showing when the employee begins and ends each work period,” “[m]eal periods,” and [t]otal hours worked in the payroll period and applicable rates of pay.”

Subsection (B) requires an employer to provide accurate, itemized statements showing deductions and the dates of the pay period. Subsection (C) requires such records to be kept for three (3) years and made available on request.

As discussed above, Defendants failed to incorporate the extra hours worth of work when Mr. Archuleta and other similarly situated employees worked through their entitled meal breaks without being paid premium wages. The extra hours worth of work at the applicable rate of pay was not disclosed on the itemized wage statements in violation of Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Section 7 Records. Also, Defendants failed to record all meal periods as all meal periods were not provided.

Conclusion

As a consequence of Defendants violation of California Labor Code Sections 201, 202, 203, 226(a) 1-2, 4-5, 8, 9, 226.3, 226.7 510, 512, 558. 1194, Wage Orders 1, 3, 4, 7, 8, 9, 13 and 14, Sections 3, 7, 11 and 12. Mr. Archuleta seeks penalties for each violation as an individual and on behalf of all aggrieved employees at Defendants.

Sincerely,

Jackson Law, APC

/s/ Armond M. Jackson

Armond M. Jackson