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March 15, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL # 7019 2970 0000 2983 0962

Return Receipt Requested

Palecek Imports, Inc.
601 Parr Boulevard
Richmond, CA 94801

Re: Mandisa Ain Lyons v. Palecek Imports, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Palecek Imports, Inc.
From: Mandisa Ain Lyons, on behalf of herself and aggrieved employees who were subject to the employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mandisa Ain Lyons ("Ms. Lyons" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Palecek Imports, Inc. (hereinafter "Palecek's" or "Employer") is a California corporation that operates a barbeque restaurant. Ms. Lyons began his employment with Employer in or around June 2019 until her resignation in or around January, 2021.

Ms. Lyons alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 1174, 1194, and 2802 by failing to pay Ms. Lyons and all other aggrieved employees all wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, failing to provide all wages earned at end of employment and failing to reimburse for necessary business expenditures. Ms. Lyons and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Palecek failed to pay Ms. Lyons and other aggrieved employees for all hours worked, in accordance with California law, including both minimum wage and overtime

Employer failed to pay Ms. Lyons and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. As can be seen from Ms. Lyons's wage statements Employer failed include non-discretionary bonuses for purposes of paying legally mandated overtime when they worked over eight (8) hours in a day or forty (40) hours in a week, which caused Ms. Lyons's overtime rate to be incorrect. *Huntington Memorial Hospital v. Superior Court of Los Angeles*, 131 Cal. App. 4th 893 (2005). The incorrect overtime rate resulted in lost wages to Ms. Lyons and other aggrieved employees.

Specifically, Defendant required Plaintiff and Plaintiff Class to work in excess of eight (8) hours, per day, by having Ms. Lyons and aggrieved employees clock out at the end of their shift, but continue to perform work duties.

The Employer also had a policy and/or practice of rounding the hours worked by Ms. Lyons and other aggrieved employees, which systematically undercompensated Ms. Lyons and other aggrieved employees. See's *Candy Shops, Inc. v. Superior Court*, (2012) 210 Cal.App.4th 889.

Employer's failure to pay minimum wage and applicable overtime rates to Ms. Lyons and other aggrieved employees as detailed above is actionable under PAGA as a violation of Labor Code sections 227.3, 510 and 1194.

B. Palecek failed to provide Ms. Lyons and other aggrieved employees with meal and rest periods, or premium compensation in lieu thereof, in accordance with California law.

Ms. Lyons alleges that he and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their work. Ms. Lyons and other aggrieved employees allege that often they did not receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.). When employees were prevented from taking timely and complete meal periods, they did not receive premium pay as compensation for the missed meal period.

Ms. Lyons further alleges that he and other aggrieved employees often had to miss rest

periods for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Ms. Lyons alleges he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512. Ms. Lyons also alleges that where a meal period premium was paid, Employer failed to pay at the proper rates.

C. Palecek failed to provide Ms. Lyons and other aggrieved employees compliant wage statements

By failing to include on Ms. Lyons and other aggrieved employees' pay stubs all compensation for all regular hours and overtime hours worked, Employer failed to keep accurate payroll records and failed to provide Ms. Lyons and other aggrieved employees with complete and accurate wage statements. Ms. Lyons alleges that Employer also failed to include his legal employer on the wage statements. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

D. Palecek failed to pay all wages earned at the time their employment ended to Ms. Lyons and aggrieved employees

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203 and 204, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended. At the time of Ms. Lyons and other aggrieved employees' termination, they were entitled to receive back wages that are owed as a result of Employer's failure to include non-discretionary bonuses in Ms. Lyons and other aggrieved employees' regular rate for purposes of paying overtime as well as wages for the time worked during the meal breaks or the premiums paid in lieu of missed breaks. However, Employer failed to pay such wages at the end of Ms. Lyons and other aggrieved employees' employment.

E. Palecek failed to reimburse Ms. Lyons and aggrieved employees for Necessary Business Expenditures

Here, not only were Employer failed to reimburse Ms. Lyons and aggrieved employees for use of their cellular phones in performing their job duties. Furthermore, Employer failed to reimburse Ms. Lyons and aggrieved employees for use of their home as an office to perform their job duties.

Due to the abovementioned, Employer failed to reimburse Plaintiff and Plaintiff Class for necessary business expenditures.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of

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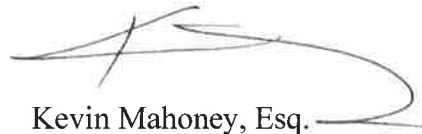
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this writing. Therefore, if through discovery and/or expert review, Ms. Lyons becomes aware of additional compensation owed or losses incurred by Ms. Lyons or by any other aggrieved employee of the Employer, Ms. Lyons expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

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Long Beach, CA 90802
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Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC