



MATERN LAW GROUP, PC

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February 12, 2025

Via Online Submission

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

Via Certified U.S. Mail – Return

Receipt Requested

Snak King Corporation
16150 E. Stephens St.
City of Industry, California 91745

Via Certified U.S. Mail – Return

Receipt Requested

Snak-King LLC
16150 E. Stephens St.
City of Industry, California 91745

Re: Amended Notice Pursuant to California Labor Code § 2699.3

Employee: Francisco Camarena Malagon

Employer: Snak King Corporation and Snak-King LLC

To Whom It May Concern:

This office represents Francisco Camarena Malagon (“Mr. Malagon”), who was employed by Snak King Corporation and Snak-King LLC (collectively, “Snak King”) as a Class A Driver from approximately October 8, 2012 to March 22, 2021. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, which Mr. Malagon alleges Snak King has violated, including the facts and theories to support the alleged violations. Please be advised that this letter constitutes written notice required by Labor Code § 2699.3, subdivisions (a)(1)(A) and (c)(1)(A) and may lead to immediate action against Snak King in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Snak King. Enclosed please find a draft of Mr. Malagon’s proposed complaint, which is incorporated by reference into this notice. Under separate cover, our office is sending a check in the amount of \$75.00 to the Accounting Unit of the

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Department of Industrial Relations for the requisite filing fee, pursuant to Labor Code § 2699.3, subdivisions (a)(1)(B) and (c)(1)(B).

We are investigating a potential class and representative action on behalf of Snak King's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees in violation of Labor Code §§ 226.7 and 512 and the Wage Orders, including No. 1-2001, §§ 11-12; failure to pay one additional hour of compensation at the employee's regular rate of compensation for each workday that a meal or rest period is not provided in violation of Labor Code § 226.7 and the Wage Order, including No. 1-2001, §§ 11(B) and 12(B); failure to pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194, 1197 and 1197.1 and the Wage Orders, including No. 1-2001, § 4; failure to pay employees overtime wages in violation of Labor Code §§ 510, 1194, and 1198 and the Wage Orders, including No. 1-2001, § 3; failure to timely pay employees all wages earned in violation of Labor Code § 204; willful failure to pay all wages due to discharged and quitting employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226; failure to maintain required records pursuant to Labor Code §§ 226, 1174 and 1174.5 and the Wage Orders, including No. 1-2001, § 7; unlawful deductions and withholdings from employees' wages in violation of Labor Code §§ 221, 223 and 224; failure to provide paid sick leave pursuant to Labor Code §§ 246, 248.6, and 248.7; failure to provide one day's rest in seven pursuant to Labor Code §§ 551 and 552; and requiring employees written agreement as a condition of employment pursuant to Labor Code §§ 432.5, 432.6. This conduct also resulted in violations of the IWC Wage Orders, including Wage Order Nos. 1-2001, 4-2001, and 9-2001, and the equivalent regulation sections, 8 CCR Section 11010, 8 CCR Section 11040, and 8 CCR Section 11090.

The allegations made by Mr. Malagon on behalf of himself and all other similarly-situated current and former non-exempt employees of Snak King in the State of California during the four years preceding the date of this notice are based on the following facts and theories: meal periods were less than thirty minutes, late (first meal periods starting after the fifth hour of work and/or second meal periods starting after the tenth hour), not given at all (including second meal periods after ten hours of work), or interrupted; rest periods were less than ten minutes, not provided, interrupted, and/or late; employees were not provided one hour of pay for each workday a meal period was not provided; employees were not provided one hour of pay for each workday a rest break was not authorized and permitted; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law.¹ Given the overtime, meal period and rest period violations and Lumber Liquidators' failure to compensate its employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Lumber Liquidators' unlawful employment practices and policies have deprived its employees of earned wages and other compensation.

Failure to Provide Meal Periods

¹ "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." *Gutierrez v. California Commerce Club, Inc.* (2010) 187 Cal.App.4th 969, 979 n.5.

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Pursuant to Labor Code §§ 226.7 and 512 and the Wage Orders, including No. 1-2001, § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Mr. Malagon and other aggrieved employees are non-exempt employees and are entitled to the protections of California Labor Code §§ 226.7 and 512 and the Wage Orders, including No. 1-2001, § 11. Snak King failed to provide its employees timely and uninterrupted thirty-minute meal breaks. In fact, Mr. Malagon’s and other aggrieved employees’ meal periods were short (less than thirty minutes), late (first meal periods after the fifth hour of work and second meal periods after the tenth hour), interrupted and/or missed. Snak King consistently failed to provide Mr. Malagon and other aggrieved employees first meal periods for shifts under 10 hours and second meal periods for shifts exceeding 10 hours, because Mr. Malagon and other aggrieved employees were given too much work to perform to take meal breaks, and Snak King failed to provide coverage to employees to take meal periods.

Snak King further violated Labor Code § 226.7 and the Wage Orders, including No. 1-2001, by failing to compensate Mr. Malagon and other aggrieved employees who were not provided with meal periods in accordance with California law which requires one additional hour of pay at each employee’s regular rate of compensation for each workday a meal period was not provided. Snak King also failed to pay premium wages at Mr. Malagon and other aggrieved employees’ regular rate of pay.

Failure to Authorize and Permit Rest Periods

Pursuant to Labor Code § 226.7 and the Wage Order, including No. 1-2001, § 12, an employer is required to provide rest periods to its employees. An employer must provide a ten (10) minute rest period for every four (4) hours worked or major action thereof which insofar as practicable shall be in the middle of each work period. Furthermore, an employer must pay one extra hour of compensation for each workday a rest period is not authorized and permitted.

Mr. Malagon and other aggrieved employees were and are non-exempt employees and are entitled to the protections of Labor Code § 226.7 and the Wage Orders, including No. 1-2001. Snak King failed to authorize and permit its employees to take required rest periods. Specifically, Snak King maintained a policy or practice of not authorizing and permitting Mr. Malagon and other aggrieved employees to take one 10-minute rest break for shifts 3.5-6.0 hours, a second rest break for shifts greater than 6 hours and less than or equal to 10 hours, and a third rest break for shifts in excess of 10 hours. Snak King consistently failed to authorize and permit Mr. Malagon and other similarly-situated individuals to take rest breaks because Mr. Malagon and other

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similarly-situated individuals were given too much work to perform to take rest breaks. When Mr. Malagon and other aggrieved employees were able to take rest breaks, Snak King failed to authorize and permit Mr. Malagon and other aggrieved employees to take their rest breaks in the middle of each work period insofar as practicable.

Snak King further violated Labor Code § 226.7 and the Wage Orders, including No. 1-2001, § 12 by failing to pay Mr. Malagon and other aggrieved employees one additional hour of pay at each employee's regular rate of compensation for each workday a rest period was not authorized and permitted, and failing to pay premium wages at Mr. Malagon and other aggrieved employees' regular rate of pay.

Failure to Pay Minimum Wages

Pursuant to Labor Code §§ 1194, 1197, 1197.1 and the Wage Orders, including No. 1-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Mr. Malagon and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 1194, 1197, 1197.1 and the Wage Orders, including No. 1-2001, § 4. Snak King failed to pay Mr. Malagon and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, suffering or permitting Mr. Malagon and other similarly-situated individuals to work off-the-clock; requiring, suffering or permitting Mr. Malagon and other aggrieved employees to work through their meal breaks but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Malagon and other aggrieved employees; failing to properly maintain Mr. Malagon's and other aggrieved employees' records; failing to provide accurate itemized wage statements to Mr. Malagon and other aggrieved employees for each pay period; and other methods to be discovered.

Snak King's conduct violates Labor Code §§ 1194, 1197, 1197.1 and the Wage Orders, § 4.

Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1194, 1198 and the Wage Orders, including No. 1-2001, § 3, an employer must compensate its employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Malagon and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code §§ 510, 1194, 1198 and the Wage Orders, including No. 1-2001. Snak King failed to compensate Mr. Malagon and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1

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½) times or double the regular rate of pay as provided by Labor Code §§ 510, 1194, 1198 and the Wage Orders, including No. 1-2001, § 3; requiring, suffering or permitting Mr. Malagon and other aggrieved employees to work off-the-clock; requiring, suffering or permitting Mr. Malagon and other aggrieved employees to work through meal periods but not compensating them for this time; illegally and inaccurately recording time worked by Mr. Malagon and other aggrieved employees; failing to properly maintain Mr. Malagon's and other aggrieved employees' records through falsifying hours worked; failing to provide accurate itemized statements to Mr. Malagon and other aggrieved employees for each pay period; failing to include non-discretionary bonuses into regular rate of pay for overtime purposes; and other methods to be discovered.

In violation of California law, Snak King has refused to perform its obligations to compensate Mr. Malagon and other aggrieved employees for all wages earned and all hours worked. Snak King's conduct violates Labor Code §§ 510, 1194, 1198 and the Wage Orders, § 3.

Failure to Timely Pay All Wages Earned

Pursuant to Labor Code § 204, an employer must pay its employees at least twice a month for all wages earned during the preceding pay period. Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. An employer using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period in which the wages were earned.

Snak King failed to pay Mr. Malagon and other aggrieved employees on their regularly scheduled payday for all work performed during the preceding pay period. Specifically, Snak King required Mr. Malagon and other aggrieved employees to work off-the-clock without compensation and required Mr. Malagon and other aggrieved employees to work through required meal breaks without compensation. Additionally, Snak King failed to pay Mr. Malagon and other aggrieved employees premium wages owed for each workday a meal period was not provided, each workday a rest period was not authorized and permitted, and each workday that overtime that was worked but not paid appropriately.

Snak King also failed to pay Mr. Malagon and other aggrieved employees for the overtime wages they earned in violation of Labor Code § 204. Labor Code § 204 requires an employer to pay overtime wages no later than the payday for the next regular payroll period following the payroll period in which the overtime wages were earned. Snak King knew they were required to pay overtime wages, yet on many occasions failed to pay Mr. Malagon and other aggrieved employees overtime wages on any payday. This conduct results in liability under Labor Code § 210.

Failure to Pay All Wages Due Upon Separation

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Pursuant to Labor Code § 201, 202 and 203, an employer is required to pay all earned and unpaid wages to an employee upon separation. Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Labor Code § 202, an employer is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to thirty (30) days.

Snak King willfully failed to pay accrued wages and other compensation to aggrieved employees in accordance with Labor Code §§ 201 and 202. Because Snak King required Mr. Malagon and other aggrieved employees to work off-the-clock without compensation and through required meal breaks without compensation and failed to pay Mr. Malagon and other aggrieved employees the premium wages for all meal periods which were not provided, all rest periods which were not authorized or permitted, and overtime that was worked but not paid appropriately, Snak King failed and continues to fail to pay the full earned and unpaid wages due to aggrieved employees upon separation.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226 requires every employer to furnish each of its employees an accurate itemized wage 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, (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.

Snak King failed to provide Mr. Malagon and other aggrieved employees with timely and accurate itemized wage statements in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the name and address of the legal entity or entities employing Mr. Malagon and other aggrieved employees, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226 and the Wage Orders, § 7.

Specifically, Snak King had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Snak King knowingly failed to include in the wage statements

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the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. As a result, Mr. Malagon and other aggrieved employees lost wages. In addition, Snak King had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Snak King knowingly failed to include this time worked in the wage statements. As a result, Mr. Malagon and other aggrieved employees lost wages. Snak King also did not properly calculate the regular rate of pay of Mr. Malagon and other aggrieved employees. As a result, Mr. Malagon's and other aggrieved employees' wage statements did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Failure to Maintain Required Records

Snak King failed to maintain records as required under Labor Code §§ 226 and 1174 and the Wage Orders, including No. 1-2001, § 7, including but not limited to the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

Specifically, Snak King had knowledge it was not providing its employees with proper meal and rest breaks; nevertheless, Snak King knowingly failed to include in the wage statements the extra hour of compensation owed for each workday a meal break was not provided and each workday a rest break was not authorized and permitted. In addition, Snak King had knowledge it was requiring employees to work off-the-clock and was not properly compensating its employees for all hours worked, yet Snak King knowingly failed to include this time worked in the regular rate of pay of aggrieved employees. Finally, during the relevant time period, Snak King failed to keep accurate and complete payroll records showing the daily hours worked and the wages paid to aggrieved employees.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties

Labor Code §§ 2800 and 2802(a) require an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Snak King failed to indemnify Mr. Malagon and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Snak King, including but not limited to expenses for cell phones, uniforms, travel-related expenses, including but not limited to use of personal vehicles, and other employment-related expenses, in violation of Labor Code §§ 2800 and 2802.

Failure to Provide Sick Pay

Labor Code § 246 provides that all employees are entitled to accrued sick pay. Snak King failed to provide Mr. Malagon and other aggrieved employees with paychecks showing any accrual

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of sick time as required by the Labor Code. Snak King also failed to pay sick pay at the regular rate of pay.

Additionally, Labor Code §§ 248.6 and 248.7 required Snak King to provide California Supplemental Paid Sick Leave (“SPSL”) through December 31, 2022. Pursuant to Labor Code § 246, SPSL must be set forth separately from paid sick days. Snak King failed to provide Mr. Malagon and other aggrieved employees with written notice that sets forth the amount of SPSL that Mr. Malagon and other aggrieved employees had used or were entitled to on wage statements. Specifically, an employer is required to list hours on wage statements used if an employee has not used any SPSL. Mr. Malagon and other aggrieved employees were entitled access to SPSL and to know whether any had been utilized if they experienced a qualifying need for leave. However, Snak King failed to provide SPSL or properly account for it on the wage statements of Mr. Malagon and other aggrieved employees as mandated by California law. Snak King’s unlawful acts deprived Mr. Malagon and other aggrieved employees of all wages owed.

Failure to Provide Day of Rest

Labor Code § 551 provides for “one day’s rest [from work] in seven,” and Labor Code § 552 prohibits an employer from “causing” an employee to work more than six days in seven. Employees who work on the seventh day of a workweek are entitled to premium pay in the amount of one and a half times the regular rate of pay for the first eight hours and double time for all hours worked thereafter. Snak King violated Labor Code §§ 551 and 552 by requiring employees to work more than seven consecutive days, and by failing to pay employees who worked on the seventh day of the workweek premium pay at the rate of one and a half times their regular rate of pay for the first eight hours and double time for all hours worked thereafter.

Arbitration Agreements as a Condition of Employment

Labor Code §§ 432.5 and 432.6 prohibit employers from requiring current and prospective employees to “waive any right, forum, or procedure” for a violation of the California Labor Code. Cal. Lab. Code § 432.6(a). Labor Code § 432.5 prohibits employers from requiring employees or applicants “to agree, in writing, to any term or condition which is known by such employer . . . to be prohibited by law.” Snak King violated Labor Code §§ 432.5 and 432.6 by requiring employees to sign arbitration agreements as a condition of starting or continuing their employment at Snak King.

This notice is hereby given to Snak King and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

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This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Snak King, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Orders, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Mr. Malagon's reasonable attempt to settle his dispute with Snak King prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to apprise Snak King of Mr. Malagon's aforementioned grievances and the proposed remedies as detailed below, while affording Snak King reasonable opportunity to meet Mr. Malagon's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Snak King shall pay Mr. Malagon and all other similarly-situated persons employed by Snak King at any time during the past 48 months back pay and compensation for the above-referenced violations.

2. Snak King shall comply with all California labor laws and ensure that its non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Snak King shall conduct a survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of meal breaks which were not provided, the number of rest breaks which were not authorized and permitted, and the number of employees who were required to pay for cell phones, uniforms, travel-related expenses or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. Snak King shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Snak King also shall pay each employee one hour of pay for each workday he or she was not provided one or more and meal periods, as required by Labor Code § 226.7. Snak King also shall pay each employee one hour of pay for each occasion he or she worked on the seventh day of the workweek, as required by Labor Code §§ 551 and 552.

5. Snak King shall reimburse those employees who were forced to pay for any business expenses incurred for Snak King's benefit, including but not limited to cell phone, uniform, and travel-related expenses.

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6. Snak King shall discontinue requiring employees to sign arbitration agreements as a condition of employment.

7. Snak King shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

8. Snak King shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

9. Snak King shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code § 2698 *et seq.*, including but not limited to penalties under Labor Code §§ 206.5, 210, 225.5, 226.3, 558, 1174.5, 1182.12, 1197.1, 1198, 1199 and 2699 and the Wage Orders, § 20.

10. Snak King shall pay reasonable attorney's fees and costs, pursuant to Labor Code § 218.5.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Matern Law Group, PC, 2101 E. El Segundo Blvd, Ste 403, El Segundo, California 90245. Additionally, please advise us if the Agency or Snak King require additional information regarding Mr. Malagon's complaints.

Thank you for your prompt attention to this matter.

Very truly yours,

MATERN LAW GROUP, PC

A handwritten signature in black ink, appearing to read 'K. Doyan', with a long horizontal flourish extending to the right.

Kristen B. Doyan, Esq.