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April 6, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: *Benny Alvarez v. The Green Earth Farmacie, Inc., d.b.a Emberz, d.b.a. Muzeum*

Dear Representative:

We have been retained to represent Benny Alvarez against The Green Earth Farmacie, Inc., d.b.a Emberz, d.b.a. Muzeum for violations of California wage-and-hour laws (hereinafter referred to as “Defendant”).

Background

Mr. Alvarez is pursuing his California Labor Code section 2698 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”)) claim on a representative basis. Therefore, Mr. Alvarez may seek penalties for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

The Green Earth Farmacie, Inc., d.b.a. Emberz, d.b.a. Muzeum is a California corporation that does business throughout the state and its principal office is in Van Nuys, California.

Defendant employed Mr. Alvarez as a non-exempt employee located in Los Angeles County, California within one year of the date of this. Defendant directly controlled the wages, hours and working conditions of Mr. Alvarez’s employment.

Legal Violations Alleged

As a pattern and practice, Defendant failed to properly pay Mr. Alvarez and other non-exempt aggrieved employees for all hours worked, failed to properly provide or compensate meal periods and rest breaks, failed to issue compliant wage statements, and failed to pay all wages due and owing upon termination, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Alvarez has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees of Defendant.

Defendant has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, and 1198, 2802.

California Labor Code sections 510, 558, 1194, 1197 and 1197.1 require employers to pay employees at least a minimum wage for each hour worked, and overtime wages for all hours worked over 40 hours in a week or 8 in a day (including double overtime for hours worked exceeding 12 in a day). During the relevant time period, Defendant failed to compensate Mr. Alvarez and other aggrieved employees for all hours of work performed, and failed to pay overtime wages for all hours worked exceeding 8 in a day or 40 in a week. Specifically, Mr. Alvarez alleges Defendant modified or manually shaved the recorded hours of Mr. Alvarez and other aggrieved employees, and failed to pay for all hours actually worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal period or rest break is not provided. During the relevant time period, Defendant failed to provide meal and rest breaks, which required Mr. Alvarez and other aggrieved employees to work through, cut short, or altogether skip their meal periods and/or rest breaks. Despite these facts Defendant never compensated premium wages to Mr. Alvarez and other aggrieved employees.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Defendant failed to pay Mr. Alvarez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including as outlined above and pay failing to timely issue paychecks.

California Labor Code sections 201 to 203 require that employers pay their employees all wages due and owing upon termination of employment within specified time periods. During the relevant time period, Defendant failed to pay Mr. Alvarez and other aggrieved employees all

wage due them within the time periods specified by California Labor Code sections 201 to 203 as outlined above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Defendant did not provide Mr. Alvarez and other aggrieved employees with complete and accurate itemized wage statements.

California Labor Code section 558 allows for the following recovery of penalties:

- (a) 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 as follows:
 - (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
 - (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Mr. Alvarez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, Defendant failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Alvarez and other aggrieved employees.

California Labor Code section 2802 requires an employer to reimburse its employees for all necessary work-related expenses. During the relevant time period, Defendant failed to reimburse Plaintiff and aggrieved employees for expenses incurred in direct consequence of the discharge of their duties, including, but not limited to, all expenses incurred in the use of personal mobile telephones and vehicles for work purposes.

We believe that Mr. Alvarez and other current and former California-based hourly-paid or non-exempt employees of Defendant are entitled to penalties and wages as allowed under

California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.

Conclusion

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Alvarez will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees employed by Defendant within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Brian G. Lee". The signature is written in a cursive, flowing style.

Brian G. Lee

BGL:gh

cc: The Green Earth Farmacie, Inc. (via Certified Mail, RRR)
c/o Cory Delpasand
7760 Burnet Avenue
Van Nuys, California 91405