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PAGA Administrator

Via Certified Mail

Fastenal Company
2001 Theurer Blvd.
Winona MN 55987

Subject: *Christopher Aguilar v. Fastenal Company*

Dear Representative:

This office represents Christopher Aguilar ("Aguilar") in connection with Labor Code violation claims related to his employment with Fastenal Company ("Fastenal"). Fastenal can be contacted at:

Fastenal Company
2001 Theurer Blvd.
Winona MN 55987

Mr. Aguilar intends to seek PAGA penalties on behalf of himself and employees of Fastenal in California who were subjected to any of the Labor Code violations referenced herein within the last year ("Aggrieved Employees"). This letter is sent pursuant to the requirements of Labor Code section 2699.3. The violations alleged in this letter are ongoing. The PAGA Period is from one year prior to the date of this letter through the date of the final disposition of the action filed pursuant to this letter.

First, during the course of their employment, Fastenal required Aguilar and the Aggrieved Employees to manually input their clock in and clock out times on their timecards. However, rather than record their *actual* clock in and clock out times, Defendants instructed Aguilar and the Aggrieved Employees to record clock in and clock out times consistent with the times they were *scheduled* to work. As a result of this policy and practice, Aguilar and the Aggrieved Employees were not paid for all hours worked, because they were often required to begin working prior to the start of their shift and continue working past the end of their shift.

Second, Aguilar and the Aggrieved Employees were required to manually input a timely, 30-minute meal break on their timecards, regardless of when they took a meal break, if at all, and regardless of the length of their break. Aguilar and the Aggrieved Employees were also required to manually input two timely, 10-minute rest breaks on their timecards, regardless of when they took their rest breaks, if at all, and regardless of the length of their breaks. Despite being required to input facially complaint meal and rest breaks on their timecards, Aguilar and the Aggrieved Employees were often required to take short meal and rest breaks, be on call during their breaks, or miss them entirely.

Third, Fastenal paid Aguilar and the Aggrieved Employees bonuses, commissions, and other non-discretionary pay. However, Fastenal failed to include this non-discretionary pay in the calculation of Aguilar and the Aggrieved Employees' sick leave rate of pay. As a result, Fastenal underpaid sick leave pay to Aguilar and the Aggrieved Employees. Furthermore, Fastenal's failure to provide notice of the correct sick leave amount balance left for Aguilar and the Aggrieved Employees affected the intelligent exercise of their paid sick leave benefits. But for this failure, Aguilar and the Aggrieved Employees would have used their paid sick leave prior to their respective separation dates.

Fourth, after Aguilar and the Aggrieved Employees' employment with Fastenal ended, Fastenal violated Labor Code section 202 by failing to pay them all wages due and payable within the relevant statutory time limits pursuant to Labor Code sections 201 and 202.

Fifth, Fastenal required Aguilar and the Aggrieved Employees to purchase uniforms, including but not limited to T-Shirts bearing Fastenal's name and logo. However, Fastenal failed to reimburse Aguilar and the Aggrieved Employees for these work-related expenses.

Based on the foregoing, the claims being asserted by Mr. Aguilar are as follows:

Violation of Labor Code section 1194 – Failure to Pay all Minimum and Overtime Wages

Labor Code section 1194 states that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

As described above, Aguilar and the Aggrieved Employees were not compensated for all of the time they worked because they were instructed not to record any pre-shift or post-shift activity on their timecards. Furthermore, Aguilar and the Aggrieved Employees were required to record a 30-minute meal break on their timecards, even though they regularly worked through all or some of their meal breaks. Fastenal did not pay Aguilar and the Aggrieved Employees for these 30-minute periods, resulting in more unpaid time. Because Aguilar and the Aggrieved Employees often worked shifts of 8 hours or more, this unpaid time was often overtime.

As such, Fastenal is subject to civil penalties pursuant to Labor Code sections 558 and 1197.1.

Violation of Labor Code sections 226.7 and 512(a) – Failure to Provide Meal and Rest Breaks or Compensation in Lieu Thereof

California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than 5 hours per day without providing an uninterrupted meal period of not less than 30 minutes.

California Labor Code section 226.7 provides that 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, and that the rest period time shall be based on the total hours worked daily at the rate of 10 minutes net per 4 hours or major fraction thereof.

Labor Code section 226.7 further provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission, and that if an employer fails to provide an employee a meal period or rest period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

As set forth above, Aguilar and the Aggrieved Employees frequently not provided with complaint meal and rest breaks. However, Aguilar and the Aggrieved Employees were instructed to input a timely 30-minute meal break and two timely 10-minute rest breaks on their timecards regardless, of whether they were late, short, or nonexistent. Despite regularly depriving Aguilar and the Aggrieved Employees of complaint meal and rest breaks, Fastenal did not pay premium pay for these missed breaks pursuant to Labor Code section 226.

As such, Fastenal is subject to civil penalties pursuant to Labor Code sections 2699.

Violation of Labor Code sections 233 and 234 – Failure to Pay Sick Leave Pay at the Correct Rate

An employer is required to provide paid sick days in accordance with Labor Code sections 245 through 248.5. Labor Code section 246 requires an employer to pay sick leave pay at an employee's regular rate of pay.

Here, Fastenal failed to incorporate all non-discretionary remunerations, including but not limited to, bonuses, incentive pay, and commissions, into Aguilar and the Aggrieved Employees' sick leave rates of pay. Failure to include this non-discretionary pay into the calculation of Aguilar and the Aggrieved Employees' sick leave rates of pay resulted in the underpayment of sick leave pay. Therefore, Fastenal is subject to civil penalties pursuant to Labor Code sections 2699.

Violation of Labor Code section 226 – Wage Statement Violations

Labor Code section 226(a)(9) requires an employer to furnish wage statements that, among other things, list "total hours worked by the employee" and total gross and net wages earned, among other things.

Here, Fastenal issued wage statements which did not accurately list the actual time that Aguilar and the Aggrieved Employees worked. Furthermore, since Fastenal failed to pay Aguilar and the Aggrieved Employees for all time worked, missed meal and rest premiums, and sick leave pay, as described above, the wage statements that Fastenal issued did not include all gross and net wages earned, and were generally inaccurate.

As a result of the above, Fastenal provided wage statements that were inaccurate in violation of Labor Code section 226. As such, the PAGA penalties listed in Labor Code section 226.3 apply.

Violation of Labor Code sections 201/202 – Waiting Time Penalty

Labor Code section 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states, in pertinent part, “If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.” To the extent an employer has been found to have violated the foregoing statutes, the employer shall be charged a penalty for each day in which the employee remains unpaid not to exceed 30 days pursuant to Labor Code 203(a).

Here, Fastenal failed to pay Aguilar and the Aggrieved Employees all wages due during the course of their employment as alleged herein. It follows that Fastenal also failed to pay these wages due upon conclusion of Aguilar and the Aggrieved Employees’ employment. These wages include, but are not limited to, all minimum and overtime wages, premium pay for missed meal and rest breaks, and sick leave pay. Therefore, Fastenal is subject to civil penalties pursuant to Labor Code sections 2699.

Violation of Labor Code section 2802 – Indemnification for Expenses and Losses

Labor Code section 2802 states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties...”

Fastenal required Aguilar and the Aggrieved Employees to purchase work related expenses, including but not limited to T-Shirts bearing Fastenal’s name and logo. However, Fastenal failed to reimburse Aguilar and the Aggrieved Employees for these work-related expenses. Accordingly, Fastenal is subject to civil penalties listed in Labor Code section 2699.

If you have any concerns, please contact me at the address below.

Thank you,

A handwritten signature in black ink, appearing to read 'Manny Starr', with a stylized flourish at the end.

Manny Starr