LebeLaw
A PROFESSIONAL LAW CORPORATION

(213) 444-1973 (213) 457-3092 jon@lebelaw.com 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

February 16, 2023

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Papa Inc.
200 South Biscayne Boulevard, Suite 1900
Miami, FL 33131

Re: Amended Notice pursuant to California Labor Code § 2698, *et seq*., the Private Attorneys General Act regarding claims of Jennifer Pardo and Evangeline Matthews, individually, and on behalf of all aggrieved employees of Defendants

Dear PAGA Administrator:

Please be advised that Jennifer Pardo and Evangeline Matthews ("Claimants") have retained Lebe Law, A Professional Law Corporation to represent her and other aggrieved employees for wage-and-hour claims against their former employer Papa, Inc., any related entities, and their managers, agents, officers and directors, and Does 1-10 ("Papa"). Claimants submit this amended notice, amending the prior notice filed on February 21, 2022 by Jennifer Pardo, and the original PAGA notice filed on August 12, 2021, by Carice Ashley Andersen, on behalf of themselves and all current and former employees employed by the Employer in California.

Papa has violated several Labor Code provisions and is therefore liable for civil penalties under California Labor Code § 2698, *et seq*. We request your agency investigate the claims against Papa. This letter will serve as notice of these allegations pursuant to the Private Attorneys Generals Act of 2004 ("PAGA"). (Cal. Lab. Code § 2699.3.)

Misclassification of Employees as Independent Contractors

Papa willfully misclassified Claimants and aggrieved employees as independent contractors in violation of Labor Code section 226.8, avoiding compliance with the various sections of the Labor Code outlined below. Claimants and other aggrieved employees should have been classified as employees. Papa failed to ensure that: (1) aggrieved employees were free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (2) aggrieved employees performed work that is outside the usual course of the hiring entity's business; and (3) that aggrieved employees were customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Papa treats its workers as its employees. Papa interviews its applicants and requires them to undergo background checks. Not all applicants are hired. Indeed, according to Papa's Frequently Asked Questions ("FAQs"), there are numerous reasons why an application will be delayed or rejected:

> ▼ **Why is my application taking so long?**
>
> Some of the reasons that your application might be taking longer than expected are:
>
> - **An influx of applications**: Papa reviews and assesses all applications to determine eligibility.
> - **Waiting on documentation**: Please check your email as you might have received a message from Papa requesting further documentation.
> - **Background check taking longer than expected**: The processing time for background checks may vary for each individual, depending on the extent of their content and the verification time with county courthouses.
> - **Not currently recruiting in your area**: Your application will be placed in a queue until recruiting in your area resumes.
>
> You can check the status of your application by submitting a ticket here, our onboarding team will be more than glad to help!

If hired, aggrieved employees are instructed to select a time slot for a 'Welcome Call' with one of Papa's onboarding agents. While Papa trains its employees, it does not compensate for the training time.

Once hired and onboarded, Papa controls every aspect of how its customers are charged for Papa's services and how its employees are compensated. Papa sets the hourly rates for its employees for in-person visits, virtual visits and bonuses. Papa also determines the amount of mileage reimbursement that is employees receive, and this amount is not sufficient to fully reimburse its employees.

Papa has strict policies that all of its employees must follow. For example, Papa will only permit its employees to cancel a visit with a customer if the cancellation complies with Papa's cancellation policies. Similarly, Papa strictly prohibits its employees from working directly with customers outside of the Papa application:

> ▼ **Can a member schedule a visit with me directly?**
>
> All visits should be scheduled through PAPA or the members insurance and no extra time outside the scheduled visit should be provided. If the member has any concerns or special requests, please advise them to contact Papa through the support center.

Papa also prohibits its employees from assigning any job duties to any third parties, like any actual independent business could do:

> ▼ **Can I bring someone to a visit, or have someone else go in my place?**
>
> To ensure the safety of our Papa members, only the Papa Pal assigned should be attending the visit.

Papa requires its employees to use a smart phone with the Papa application in order to work for the company. Indeed, Papa tracks its employees during every moment they work for the company:

> ▼ **How do I get reimbursed for gas mileage?**
>
> Your commute is automatically tracked through the app, this is why it's so important to tap "Start Commute" before driving to the visit. The app will log your commute on the way to the visit and during the visit if transportation is required. Once the visit is successfully completed, we will use this information to calculate gas mileage reimbursement for the commute back as well.

In sum, Papa controls the payment of charges between its customers and workers, sets the amount of those charges, and treats the workers like employees. Accordingly, Papa has misclassified its employees as independent contractors.

Unlawful Failure to Pay All Earned Wages

Papa failed to properly compensate Claimants and the aggrieved employees for all hours worked. For example, Papa failed to pay Claimants and aggrieved employees for compensable travel time incurred when Claimants and aggrieved employees traveled from one workplace to another in the same day, and Papa failed to pay Claimants and aggrieved employees overtime wages for hours worked over eight hours in a day, or forty hours in one week. Accordingly, Papa violated California Labor Code § 204(a), which requires that employers pay "all wages … twice during each calendar month on days designated in advance by the employer as the regular paydays." As a result, Papa is liable for civil penalties pursuant to California Labor Code § 2698, *et seq*.

Unlawful Failure to Pay Minimum Wage

Papa has failed to maintain a policy that compensates aggrieved employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Order. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. For example, Papa failed to pay Claimants and aggrieved employees for compensable travel time incurred when Claimants and aggrieved employees traveled from one workplace to another in the same day. Papa also failed to pay Claimants and other aggrieved employees all wages for all time worked, including when Claimants and other aggrieved employees would spend time on standby waiting for a call so the aggrieved employee could speak and interact with Papa's customers. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and the applicable Industrial Welfare Commission Wage Order for failure to pay minimum wage, Select Comfortis liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 et seq.

Unlawful Failure to Pay Overtime

Papa failed to pay Claimants and aggrieved employees overtime wages for hours worked over eight hours in a day, or forty hours in one week. Instead, Papa paid Claimants and other aggrieved employees solely at their straight-time rate for hours worked over eight in a day, or forty in one week. As a result of violations of California Labor Code §§ 510, 1194 and the applicable Industrial Welfare Commission Wage Order for failure to pay overtime, Papa is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods And Pay Meal Period Premiums

Papa fails to maintain a policy that provides its employees with off-duty meal periods as required by California law. Claimants and other aggrieved employees regularly worked in excess of 5 and 10 hours a day without being provided meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and the applicable Wage Order. For example, Papa never told aggrieved employees that they could take a meal period. Papa failed to pay Claimants and other aggrieved employees the premium compensation mandated by Labor Code § 226.7(b) for these noncompliant meal periods. As a result of violations of California Labor Code §§ 226.7 and 512 and the applicable Wage Order, Papa is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq*.

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods And Pay Rest Period Premiums

Papa fails to maintain a policy that provides its employees with off-duty rest periods as required by California law. Claimants and other aggrieved employees regularly worked in excess of four hours or major fraction thereof during workdays without being provided ten-minute rest periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and the applicable Wage Order. Papa failed to pay Claimants and aggrieved employees the premium compensation mandated by Labor Code§ 226.7(b) for these noncompliant rest periods. As a result of violations of California Labor Code §§ 226.7, 512 and the applicable Wage Order, Papa is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698, *et seq*.

Failure to Provide Sick Pay

Papa has violated California Labor Code § 246 by willfully failing to provide mandatory paid sick leave to Claimants and aggrieved employees. Employers must provide to employees who work for 30 or more days within a year from the commencement of employment 1 hour of paid sick leave for every 30 hours worked. (Labor Code § 246(b)(1).) Papa has failed to comply with Labor Code § 246, and as a result, is liable for civil penalties pursuant to California Labor Code § 2698, *et seq*.

Unlawful Failure to Reimburse Business Expenses

Papa has violated California Labor Code §2802 by willfully failing to reimburse Claimants and other aggrieved employees for their reasonable and necessary business expenses. Reasonable and necessary business expenses must be reimbursed to an employee by an employer under Labor Code Section 2802 which provides that: "An employer shall indemnify their or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their or her duties, or of their or her obedience to the directions of the employer." Papa failed to reimburse Claimants and other aggrieved employees for all business expenses incurred for Papa's benefit, including requiring them to use their cellular phones for business purposes without reimbursing them for the equipment or service fees, as aggrieved employees were required to use Papa's mobile application in order to clock in and out of work and connect with Papa's customers, and personal protective equipment such as masks. Papa also required Claimants and aggrieved employees to travel to and from multiple worksites in a given day without properly compensating them for their transportation costs. As a result of violations of California Labor Code §2802, Papa is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 et seq.

Unlawful Failure to Maintain Time and Payroll Records

Papa has violated California Labor Code §§ 1174, 1198, 1199 and sections 7 & 11 of the applicable IWC wage order by willfully failing to maintain Claimants and aggrieved employees' time and payroll records. For example, PAPA failed to pay Claimants and other aggrieved employees all wages for all time worked, including when Claimants and other aggrieved employees would spend time on standby waiting for a call so the aggrieved employee could speak and interact with Papa's customers. As a result of such violations, Papa is liable for civil penalties pursuant to California Labor Code §§ 1174.5 and 2698 *et seq*.

Unlawful Failure to Provide Workers' Compensation Coverage and Insurance

Papa has violated California Labor Code § 3700 *et seq.* by failing to provide adequate workers' compensation coverage to Claimants and other aggrieved employees. Specifically, Labor Code § 3700 requires that an employer be "insured against liability to pay compensation by one or more insures duly authorized to write compensation insurance in this state" or otherwise obtain consent from the Director of Industrial Relations to be "self-insured." Papa, however, failed to secure this coverage and compensation insurance. As a result of such violations, Papa is liable for civil penalties pursuant to California Labor Code §§ 3700.5 and 2698 *et seq*.

Unlawful Failure to Furnish Wage Statements

Papa violated California Labor Code § 226(a) by failing to furnish Claimants and the aggrieved employees with accurate, itemized wage statements showing, among other things, the actual hours worked at each applicable hourly rate. Papa issued wage statements that fail to provide the correct hours worked, applicable hourly rates of pay for regular and overtime hours, and all wages earned, among other violations. As a result of violations of California Labor Code § 226(a), Papa is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698, *et seq*.

Unlawful Failure to Pay Wages Due Upon Termination

Papa has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing aggrieved employees at the time their employment was terminated. Papa willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. As Papa violated California Labor Code §§ 201, 201 and 203 of the Labor Code, it is liable for civil penalties pursuant to California Labor Code § 2698, *et seq*.

Conclusion

Papa has violated or has caused to be violated several California wage and hour laws. Claimants request that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request the agency inform them if it does not intend to investigate these violations so that she may bring a PAGA suit against Papa on behalf of herself and the other aggrieved employees.

Sincerely,

Jonathan M. Lebe, Esq.

Attorney for Jennifer Pardo and Evangeline Matthews,

Individually and on behalf of Aggrieved Employees