



December 29, 2021

VIA ELECTRONIC SUBMISSION

PAGA Administrator
California Labor and Workforce Development Agency
PAGAFilings@dir.ca.gov
<https://dir.tfaforms.net/308>

RE: Sahara Construction Co., Inc. (Employer)

NOTICE OF VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employers

From: Candelario Macedonio Sanchez ("Employee"), who was subjected to the wage and hour practices set forth below

This office represents Candelario Macedonio Sanchez, a former employee of Sahara Construction Co., Inc. (hereafter referred to as "Employer.") The Employee, by way of counsel, submits this Notice under California Labor Code § 2699.3(a),(c) and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period, the Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt workers. During this time period, the Employers violated California Labor Code provisions when it utilized consistent unlawful policies and procedures regarding the Employee and all other similarly situated aggrieved employees.

First, the Employer failed to provide the Employee and all other similarly situated aggrieved employees with paid rest breaks, as the Employer did not provide Employee and all other similarly situated aggrieved employees with 10-minute uninterrupted rest

periods for every four hours of work or major fraction thereof. As such, the Employer did not provide legally compliant rest breaks to the Employee and all other similarly situated aggrieved employees. The Employer moreover did not pay a rest period penalty for any of these violations.

As such, the Employee and all other similarly situated aggrieved employees worked over four hours daily without legally compliant rest periods. The Employer violated Labor Code §§ 226.7, 8 CCR § 11160 et seq., and the applicable Industrial Wage Order § 11(A)/(B), and owes rest period wages as well as penalties under Labor Code § 2699(f).

Second, the Employer failed to indemnify Employee and similarly aggrieved employees pursuant to Cal. Lab. Code § 2802 for costs incurred as a result of Employer requirements that employees furnish their own tools and equipment for construction work. The Employer was responsible for indemnifying employee for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of their duties pursuant to Cal. Lab. Code § 2802. Subdivision (c) of section 2802 defines "necessary expenditures or losses" as including "all reasonable costs..." At all relevant times, the Employer had a legal duty to pay each affected Employee for the cost and maintenance of tools, equipment, and other necessary expenses incurred as a result of Employer mandates, but failed to do so.

Such a pattern, practice and uniform administration of policy as described herein is unlawful and creates an entitlement to recovery by the Employees for the unpaid balance of the unpaid compensation pursuant to Cal. Lab. Code § 2802.

Third, the Employer failed to pay employees for all work performed. The Employer had a policy and practice by which Employer designated supervisors and/or personnel employees with unilateral authority to complete timecards and/or time records for aggrieved Employees. Employers orchestrated a timekeeping scheme aimed to circumvent Employers' legal duty to pay and Employees' right to receive overtime compensation by failing to record any minutes of work outside of exactly 8 hours in a day, as applicable. A review of the wage statements indicates an even 8 hours for all days of work, as well as "0:00" start and end times for each day of work.

Under Wage Order 16 and Cal. Lab. Code §§ 510 and 1198, et seq. the Employer was legally required to provide all aggrieved employees (a) compensation at the rate of one and one-half times their regular rate of pay for all hours worked (and minutes) in excess of eight hours, up to twelve hours, in a workday, or in excess of forty hours in a work week, and (b) compensation at the rate of twice their regular rate of pay for all hours worked in excess of twelve hours in a workday, and in excess of eight hours on the

seventh consecutive day of work in a workweek. Cal. Lab. Code § 1198 provides a private right of action for failure to pay legal compensation for all overtime hours worked. Aggrieved employees are legally entitled to compensation for overtime work performed as well as applicable penalties.

Fourth, the Employer utilized a time rounding-down policy that ignored Employees' actual work time and instead rounded their time. This policy resulted in a disproportionate impact that does not average out over a period of time and as such, is not fair and neutral on its face. The Employer implemented the rounding scheme in such a manner that resulted over a period of time in a failure to compensate for all time actually worked by the Employee and all other similarly situated aggrieved employees at the legally-mandated minimum wage.

Labor Code § 200 et seq. provides that employees are entitled to wages and compensation for work performed and provides a private right of action for failure to pay wages and compensation for said work performed. The Employer failed to pay Employee and similarly aggrieved employees minimum wages for all hours worked. Cal. Lab. Code § 1194 entitles employees to recover unpaid minimum wages. As such, the Employers violated Labor Code §§ 200, 510, 1194, 1197, 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code § 2699(f).

Fifth, The Employer issued paystubs to Employee and similarly aggrieved employees which did not include any of the following required items: gross wages earned; total hours worked; the last four digits of employees' social security numbers or, alternatively an employee identification number; the name and address of the legal entity which is the employer; and all applicable rates of pay and the corresponding number of hours worked at each rate. Under Labor Code § 226 and the applicable Industrial Wage Order, the Employer is required to include on a wage statement all of these items and more.

Here, a review of the deficient paystubs demonstrates a failure to comply because information statutorily mandated is absent both in direct and derivative form. The Employer has directly derivatively violated Labor Code § 226, and owes penalties under Labor Code §§ 2699(f) and/or 226.3.

Sixth, as a derivative result of the above claim(s), the Employer also violated Labor Code §§ 201-203 as follows:

Under Labor Code §§ 201-203, the Employee and all other similarly situated aggrieved employees are entitled to thirty days of wages at their regular rate of pay and/or other penalties for the Employer failure to pay all wages due upon separation of employment.

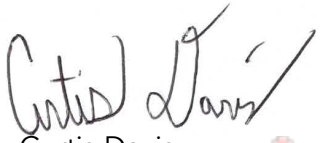
Because the Employer failed to pay all wages as set forth above, the Employer has derivatively violated Labor Code §§ 201-203, and owes penalties under Labor Code §§ 2699(f), 203 and/or 203 and/or 256.

* * *

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employers within 33 days that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employers under Labor Code § 2699.

Sincerely,
BEAMAN JACINTO LAW PC


Curtis Davis
Megan Beaman
Attorneys for Employee

cc: (via Certified Mail)
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