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8 Attorney for Defendant, GREENS OPERATIONS, INC.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF RIVERSIDE**

11 MARGARITA GARCIA, on behalf of herself)
12 and all "aggrieved employees" pursuant to)
13 Labor Code § 2698 *et seq.*,)

14 Plaintiff,)

15 vs.)

16 GREENS OPERATION, INC. a California)
17 corporation , GMPH HOSPITALITY, LLC, a)
18 California limited liability company, and)
19 DOES 1 through 10, inclusive,)

20 Defendants.)
21 _____)
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Case No. CVBL2200087

**DECLARATION OF RACHAEL L. MARKO IN
SUPPORT OF PLAINTIFF'S RENEWED
UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

***[Pursuant to Class Action Management Order #1,
Section G(3)(b)]***

Complaint Filed: June 14, 2022
Assigned for All Purposes to the Hon. Harold W.
Hopp, Dept. 1

Class Action Management Order #1, Section G(3)(b):

1. That I am an attorney at law licensed before all of the courts of the State of California, and am an attorney with the law firm of Soltman, Levitt, Flaherty & Wattles, LLP, counsel of record for the Defendant Greens Operation, Inc. As such, I can personally and competently attest to the following.

3. I advised Ms. Sanchez' counsel of the present settlement and I did not receive a response. To my knowledge, Mr. Sanchez has not filed a class or representative lawsuit.

I declare that the foregoing is true and correct under the penalties of perjury of the laws of the State of California. Executed on December 6, 2023 at Thousand Oaks, California.



Rachael L. Marko

EXHIBIT 1



2725 Jefferson Street, Suite 3, Carlsbad, California 92008
Telephone: (858) 552-0000 • Facsimile: (760) 542-7761

Alvin M. Gomez, Esq.

Boris Smyslov, Esq. – Of Counsel

July 13, 2023

Sent Via Electronic Submission and Certified Mail

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Greens Operations, Inc.
16530 Bake Parkway
2nd Floor
Irvine, California 92618

Re: Private Attorneys General Act Notice

Dear PAGA Administrator and GREENS OPERATIONS, INC.:

My office has been retained by NIKKI L SANCHEZ (hereinafter "Employee"), a former employee of GREENS OPERATIONS, INC. (hereinafter "Employer" or "GREENS") who worked for Employer within the last twelve months, to represent Employee and other similarly situated current and former Employees in their claims for unpaid wages (including interest and penalties), wage-and-hour violations arising out of Employer's failure to pay all wages due, failure to provide meal and rest periods, improper wage statements, retaliation under Labor Code 1102.5, among other violations that violate state labor laws.

NOTICE IS HEREBY GIVEN to the California Labor and Workforce Development Agency (hereinafter "LWDA") and GREENS in accordance with the Private Attorney General Act of 2004, Labor Code § 2699, *et seq.*

I. Introduction

As more fully set forth below, Employer violated several Labor Codes, which must be remedied immediately. Employer's Labor Code violations include: 1) waiting time penalties (Labor Code § 203); 2) failure to pay all wages owed every pay period (Labor Code § 204); 3) meal periods (Labor Code §§ 226.7 & 512); 4) rest periods (Labor Code §§ 226.7 & 512); 5) Itemized Wage Statement (Labor Code §§ 226 & 226.3); 6) Failure to Pay Final Wages on Time (Labor Code §§ 201 *et seq.*); 7) Failure

to Maintain Accurate Records (Labor Code §§ 1174, 1174.5); and 8) Violation of California Whistleblower Protection laws (Labor Code § 1102.5).

Employees and other similarly-situated employees were assigned and required to work shifts lasting over four (4) hours and were not provided nor allowed to take a ten (10) minute, uninterrupted, rest period during each such shift or four (4) hour work period. Employees and other similarly-situated employees were assigned and required to work shifts lasting over six (6) hours and were not provided nor allowed to take a thirty minute, uninterrupted, off-duty meal period. Employees and other similarly-situated employees were not provided accurately itemized wage statements.

II. Labor Code Violations by GREENS

A. Failure to Pay All Wages Owed Every Pay Period in Violation of Labor Code § 204

Labor Code § 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

Throughout the liability period, Employer failed to pay Employees and other similarly situated employees the full amount of all owed wages when due as required by California Labor Code § 204.

Employer failed to pay Employees and other similarly-situated employees all wages earned each pay period. Employees are informed, believe, and thereon alleges, that at all times relevant during the liability period, Employer maintained a policy or practice of not paying Employees and other similarly-situated employees for premium wages for all missed meal and rest periods, and related damages. Furthermore, Employer prevented Employees from accurately clocking in and clocking out to prevent them from receiving wages for all time worked.

Therefore, Employer is liable to its Employees for the premium wages for all missed meal and rest periods, and related damages.

B. Off-the-Clock

Employer discouraged Employees from reporting all hours worked and failed to compensate Employees for all hours worked, including meal and rest breaks worked. Employer failed and refused to compensate workers for all hours worked. Employer had a policy of discouraging Employees from working and reporting meal and rest break hours worked. As a result, Employees frequently worked “off-the-clock” and were not compensated by GREENS for all hours worked, including meal and rest break hours worked. Employer forced workers to complete tasks before clocking in and after clocking out without permitting the recordation of this time. Additionally, Employees would not be compensated for work performed during their lunch periods, at which time they would be clocked out but still performing work. The time records, if any, maintained by Employer are wholly inaccurate, as they do not reflect the true hours worked by employees. Thus, Employer’s records are inaccurate with respect to the number of hours worked, and, correspondingly, the amount of wages

owed to and/or paid to employees. Accordingly, Employer violated Labor Code §§ 200-204, 210, 216, 223, 225.5500, 500, 510, 558, 1174, 1174.5, 1194, 1197, and 1198, in addition to provisions of the applicable Industrial Welfare Commission Wage Orders.

C. Failure to Provide Meal Periods in Violation of Labor Code §§ 512, 226.7 and IWC Wage Order No. 9-2001, § 11

Labor Code § 226.7(a) provides, “[n]o employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

IWC Order No. 9-2001(11)(A) provides, in pertinent part, that “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

Section 512(a) of the California Labor Code provides, in pertinent part, that “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Employer failed to authorize and permit uninterrupted meal periods during the liability period. Employees and other similarly-situated employees were routinely required to work without an uninterrupted meal break at the direction of Employer and/or with Employer’s knowledge and acquiescence. Employees were constantly working, on call and/or were not allowed to leave their trucks so there was no opportunity for them to have any meal periods.

By its actions in requiring its Employees to work through meal periods and/or its failure to relieve Employees of their duties for their off-duty meal periods, GREENS has violated California Labor Code § 226.7 and § 11 of IWC Wage Order No. 9-2001, and is liable to reimburse NIKKI L SANCHEZ, and Other Similarly Situated Employees.

D. Failure to Provide Rest Periods in Violation of Labor Code §§ 512, 226.7 and IWC Wage Order No. 9-2001, § 12

Labor Code § 226.7(a) provides that “[n]o employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”



IWC Order No. 9-2001(12)(A) provides, in pertinent part, that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.”

IWC Order No. 9-2001(12)(8) further provides that “[i]f an employer fails to provide an employee with a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

Employer failed to authorize and permit rest breaks during the liability period. Employees and other similarly-situated employees were routinely required to work or stay on call through the rest periods, at the direction of Employer and/or with Employer’s knowledge and acquiescence. Employees were constantly working and/or on call so they were unable to take any rest break.

By its actions in requiring its Employees during the relevant period of employment to work through rest periods, Employer violated § 12 of IWC Wage Order No. 9-2001 and California Labor Code § 226.7, and is liable to Employees and other similarly-situated employees.

E. Failure to Furnish Timely and Accurate Wage Statements in Violation of Labor Code §§ 226 and 226.3

Labor Code § 226(a) provides that “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized 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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her 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 ... ”

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

Employees are informed, believe and thereon allege that at all times relevant, Employer knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to furnish Employees and other similarly-situated employees with timely and accurate itemized statements showing the gross wages earned by each of them, hours worked, hourly and/or per piece rates and number of hours and/or per piece items according to those rates and other information, as required by Labor Code § 226(a), in that the payments owed to Employees and other similarly-situated employees for unpaid minimum wages, unlawful deductions, reimbursable expenses, and missed meal and rest periods, were not all included in gross wages earned by Employees and other similarly-situated employees.

F. FINAL WAGES CLAIM

Employer failed to implement a policy and practice of paying its workers their accrued wages and other compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code. As a result, GREENS's workers were not paid all compensation due immediately upon termination or within seventy-two hours of resignation, as required by the California Labor Code. Accordingly, Employer violated Labor Code §§ 200-205, in addition to provisions of the applicable Industrial Welfare Commission Wage Orders.

G. Violation of California Whistleblower Protections in Violation of Labor Code § 1102.5

Labor Code § 1102.5(a)-(b) provides:

“(a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.”



When NIKKI L SANCHEZ discovered the violations outlined above, she notified her manager, who had an authority to investigate these violations and correct them. However, instead of investigating said violations, manager created a pretext reason for termination of NIKKI L SANCHEZ and terminated her in a matter of months for such disclosure, and damaging her personnel record in retaliation for such disclosures. It is believed that NIKKI L SANCHEZ's manager acted in accordance with a custom and practice of GREENS when retaliated against Ms. SANCHEZ for making damaging disclosures and other Employees suffered from the same retaliation.

III. Conclusion

NIKKI L SANCHEZ and Other Similarly Situated Employees, request that the Labor Code violations by GREENS OPERATIONS, INC. alleged herein be thoroughly investigated by LWDA or, alternatively, that LWDA notify Employer and Employees that it does not intend to investigate in accordance with Labor Code§ 2699.3. Please contact me with any questions or concerns at (858) 552-0000. Thank you.

Very truly yours,
GOMEZ LAW GROUP



Alvin M. Gomez, Esq.

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