

ADVOCATES

FOR WORKER RIGHTS, LLP

Attorneys

Marco A. Palau*
Joseph D. Sutton
Eric S. Trabucco
* Licensed in CA & NY

www.advocatesforworkers.com

212 9th Street, Suite 314
Oakland, CA 94607
T: (510) 269 - 4200
F: (408) 657- 4684

info@advocatesforworkers.com

November 28, 2022

Attn. PAGA Administrator via Online Filing

National Retail Transportation, Inc.
2820 16th Street
North Bergen, NJ 07047

National Retail Systems
125 Chubb Ave
Lyndhurst, NJ, 07071

Ameri-Staff, Inc.
C/o Jason Contreras, Agent for Service
11713 Washington Blvd
Whittier, CA 90606

Re: Private Attorney General Act—Second Amended Notice; Client Employer Notice LC 2810.3

To Whom It May Concern:

On behalf of aggrieved employee Fernando Gomez (hereinafter “Aggrieved Plaintiff”), this letter constitutes notice to the employer and the Labor and Workforce Development Agency (“LWDA”) of violations of the Labor Code and the Wage Orders, pursuant to Labor Code section 2699.3 (“PAGA Notice”). This letter also constitutes notice pursuant to Labor Code section 2810.3 of client employer liability (“Client Employer Notice”).

PAGA NOTICE

The violations described herein were committed against Aggrieved Plaintiff and other current or former non-exempt employees employed at warehouse distribution centers of National Retail Transportation, Inc. (“NRT”), National Transportation Systems, Inc., and NRS in California (hereinafter “NRT Warehouses”). Aggrieved Plaintiff and other current or former employees were employed directly, jointly, or through a Client Employer relationship within the meaning of Labor Code section 2810.3 by NRT and several staffing agencies, including Ameri-Staff, Inc. (“Ameri-Staff”). NRT, Ameri-Staff, and other staffing agencies are collectively referred to hereafter as “Employers” or “Defendants”.

This notice covers Aggrieved Plaintiff and all current or former non-exempt employees who were employed at NRT Warehouses in California during the relevant time period, and together all such employees are referred to as “aggrieved employees” or the “PAGA Pool.”

ADVOCATES

FOR WORKER RIGHTS, LLP

Page 2

November 28, 2022

LWDA, National Retail Transportation, et al.

Re: Second Amended PAGA Notice; Client Employer Notice

This notice also covers Defendants and their parents, subsidiaries and affiliated or related entities. Persons who violated or caused violations of the Labor Code while acting on behalf of the Employers are liable to the LWDA and aggrieved employees for civil penalties pursuant to Labor Code sections 558, 1197.1 and 2699. This includes “persons” within the meaning of Labor Code section 18 who violated or caused violations of provisions of the Labor Code and Wage Orders described in this letter. The Employers and other “persons” who violated or caused violations collectively are referred to as “Defendants.” Together, Aggrieved Plaintiff and other current or former non-exempt workers on whose behalf this notice is given are referred to as “aggrieved employees.”

Aggrieved Plaintiff

Aggrieved Plaintiff Fernando Gomez was employed by the Employers as a non-exempt, hourly employee at Defendants’ Ontario and Compton locations from February 2021 until December 16, 2021, approximately. During his tenure, Mr. Gomez worked at the Ontario and Compton warehouses, loading and unloading trucks and handling boxes of merchandise and goods and placing them onto conveyor belts. Mr. Gomez was paid \$19 per hour when his employment ended. Defendants failed to pay Aggrieved Plaintiff for all hours worked, including for time at the start and end of the shift, for time that was recorded and time that was not properly recorded or which was unlawfully manipulated to deny proper compensation. Mr. Gomez frequently worked more than 40 hours per workweek and more than eight per workday without proper payment of overtime, including work performed on the seventh day of the workweek. Defendants’ failure to pay for all hours worked violates the California Wage Orders and California minimum and overtime wage laws. Defendants required Plaintiff to work seven days of the week without a day off, in violation of Labor Code sections 551 and 552. Defendants also violated Aggrieved Plaintiff’s right to lawful rest breaks and meal periods and failed to pay premium wages in lieu thereof. Defendants failed to provide timely, complete, uninterrupted, off-duty meal periods that were free of the employer’s control, and Aggrieved Plaintiff was denied premium wages in lieu of lawful meal periods. Regardless, Defendants would still automatically deduct 30 minutes for meal periods that were less than 30 minutes, resulting in minimum wage and meal period violations. Defendants did not obtain valid and voluntary meal period waivers or on-duty meal period agreements. Defendants also failed to authorize and permit paid off-duty rest breaks of at least 10 minutes at the rate of one rest period for shifts greater than 3.5 hours, two rest periods for shifts greater than six hours and up to 10 hours, and three shifts for shifts greater than 10 hours and so on. Despite the failure to authorize and permit rest periods in compliance with the applicable Wage Order, Aggrieved Plaintiff was denied premium wages in lieu of lawful rest breaks. Plaintiff had to purchase protective equipment and tools to carry out his duties, including utility knives and protective vests. Defendants failed to reimburse him. Further, Gomez was provided inaccurate itemized wage statements that failed to state accurately the gross and net wages owed, applicable rates of pay, total hours, deductions and other statutory items, including improper payment of sick leave, which Defendants failed to pay at the regular rate or the average rate in the prior 90 days. Defendants terminated Gomez after he requested and took sick leave. When Gomez’ employment ended, Defendants failed to timely pay all wages owed to him. Aggrieved Plaintiff Gomez at all relevant times was subject to the protections of California’s labor laws, including, but not limited to, the terms and conditions of employment prescribed by the Industrial Welfare Commission’s Wage Orders.

ADVOCATES

FOR WORKER RIGHTS, LLP

Page 3

November 28, 2022

LWDA, National Retail Transportation, et al.

Re: Second Amended PAGA Notice; Client Employer Notice

The Defendants

NRT Defendants: National Retail Transportation, Inc. (“NRT”) is a Pennsylvania corporation that provides various supply chain services to industries, including transportation and distribution services. NRT has its principal executive office in New Jersey and does business in California. NRT is a brand of NRS (National Retail Systems), a nationwide network specialized in areas of delivery, distribution and capacity, according to the NRS website. *See www.nrs3pl.com*. NRS has its corporate headquarters in Lyndhurst, New Jersey. According to its website, the company:

...is a coast-to-coast operation with terminals servicing the largest ports and markets in the U.S. Our facilities are spacious, efficient, and poised to deliver the capacity, distribution, and transportation solutions your business needs.

All of our warehouses are protected by in-house security teams and the latest in logistics technology.

Strategically located to enable both local and linehaul, we have the assets and the team that will move your shipments from the port to the store shelf.

NRS and NRT have warehouses in the California Inland Empire and in the Los Angeles area. Aggrieved Plaintiff Gomez performed work for Defendants at two of Defendants’ California warehouses, Ontario and Compton. Defendants have employed Aggrieved Plaintiff and other aggrieved employees in California at their warehouses, distribution, and fulfillment centers. Defendants are liable for civil penalties arising from the violations alleged in this letter.

Ameri-Staff Defendants: Aggrieved Plaintiff is informed that Ameri-Staff, Inc. is one of several staffing agencies used by NRT to employ non-exempt workers at NRT Warehouses in California. Ameri-Staff is a California Corporation whose principal address is 11713 Washington Blvd., Whittier, CA 90606. The most recent statement of information available on the California Secretary of State website for Ameri Staff lists Elizabeth Contreras as CEO and CFO, and Jason Contreras as Secretary, Director, and Agent for Service of Process. The company describes itself as a staffing agency. Amer-Staff serves as one of several staffing agencies for NRT and Aggrieved Plaintiff alleges that Ameri-Staff is liable for civil penalties under PAGA.

Summary of Factual Allegations and Legal Claims

Defendants engaged in wide-spread wage theft through the enforcement of a series of practices and policies that violate the Labor Code and applicable Wage Orders. Defendants failed to pay Aggrieved Plaintiff and aggrieved employees for all hours worked in violation of the state’s legal minimum and overtime wage provisions contained in the Labor Code and Wage Orders. Defendants failed to compensate for all hours worked, including time during unpaid meal periods, as well as suffering and permitting work off the clock. Defendants engaged in practices that denied Aggrieved Plaintiff and other current or former employees of compensation, including time shaving, banking of hours, and unlawful rounding of time. The failure to compensate for all hours worked resulted in violations of the minimum wage and overtime laws.

In addition, Defendants failed to provide Aggrieved Plaintiff and other aggrieved employees with proper rest breaks and meal periods. Rest breaks and meal periods were systematically shorter in length than the length required by law because workers were not relieved of all duty for the statutory time frames. Aggrieved Plaintiff and other aggrieved employees were systematically denied off duty rest breaks lasting net 10 minutes, and they were denied breaks at the required rate of one rest break for shifts greater than 3.5 hours up to six hours, two rest breaks for shifts greater than six hours up to 10 hours, three rest breaks for shifts greater than 10 hours up to 14 hours, and so on. Defendants failed to provide premium wages in lieu of required rest breaks. Similarly, workers were systematically denied off-duty and timely meal periods of at least thirty (30) minutes commencing within five (5) hours from the start of the work period and were denied second meal periods for shifts greater than ten (10) hours. When Gomez' and other workers' rest breaks and/or meal periods were interrupted, shortened, or missed, Defendants would still automatically deduct 30 minutes for meal periods even when the meal period was less than 30 minutes. Defendants did not maintain and/or implement valid and lawful on-duty meal period policies or practices and failed to provide premium wages in lieu of proper meal periods.

Defendants induced Plaintiff and other aggrieved employees to forgo a day of rest to which they were entitled, scheduling them or otherwise causing them to work seven days of the week without a day off, in violation of Labor Code sections 551 and 552.

Aggrieved Plaintiff and aggrieved employees were required to incur expenses that were necessary to discharge their duties but were not reimbursed. For example, workers required certain personal protective equipment and tools to perform their work, such as vests, utility knives, and back belts or braces, among other things. Defendants failed to provide this and other equipment and tools, and workers were thus forced to purchase and maintain their own without reimbursement.

Defendants have violated the California Labor Code in their employment of aggrieved employees. Defendants and those who "caused" the alleged violations are liable for civil penalties under California Labor Code sections 2698, *et seq.* and sections 558 and 1197.1. We request that the LWDA investigate the claims alleged in this letter, including violations of: sections 201-202, 256 and 1197.1 for waiting time penalties based on willful (section 203) failure to pay all wages owed timely upon separation from employment; sections 200, 204, 204b and 210 for failure to pay all wages owed weekly, semi-monthly or when due; section 223 for secretly paying less than the statutory or contractual rate; sections 226 and 226.3 for failing to provide accurate wage statements; sections 226.7, 512 and the Wage Orders for failure to comply with meal and rest period requirements and failing to pay premiums in lieu of compliant rest and meal breaks; sections 510, 511 and 1198 for failing to pay all overtime and doubletime wages; section 510 and 558, and the Wage Orders for failure to pay overtime wages; sections 551, 552, for inducing workers to forgo a day of rest to which they were entitled, scheduling them or otherwise causing them to work seven days of the week without a day off; sections 1174 and 1174.5 for failing to maintain accurate payroll records; sections 1194, 1194.2, 1197 and 1197.1 for failure to pay minimum wages; section 2802 for failing to reimburse for all necessary business expenses; and for failing to pay sick leave at the statutory rate set forth in Labor Code sections 233, 246, 246.5, and 248.5. The Aggrieved Plaintiff, on behalf of herself and aggrieved employees, invites the Labor and Workforce Development Agency to take any action it deems appropriate.

Failure to Pay All Wages Owed for All Hours Worked

Defendants have violated and continue to violate the Wage Orders and Labor Code sections 200, 204, 204b, 226.2, 210, 221, 223, 510, 511, 558, 1194, 1194.2, 1197, 1197.1, 1198 by failing to compensate for all hours worked and failing to compensate for hours worked at the required statutory or legal minimum and overtime rates. Defendants systematically deny workers compensation at the applicable rates due to the practice of rounding time, altering time records, banking hours, requiring or knowingly suffering and permitting unpaid work, failing to compute the regular rate of pay for overtime properly, and by rounding time illegally.

As a result, Defendants are liable for civil penalties and wages pursuant to Labor Code sections 210, 225.5, 558, 1197.1, 2699(f) and 2698, *et seq.*

Failure to Provide Meal and Rest Periods or to Pay
Premiums for Missed Rest Breaks and Meal Periods

Defendants have violated the applicable Wage Orders and Labor Code sections 226.7 and 512 by failing to provide rest breaks and meal periods and to pay premium compensation due to employees for missed rest breaks and meal periods. Defendants do not authorize the requisite number of rest breaks per length of shift. In addition, rest breaks are systematically discouraged, are not completely off duty and are not at least net ten (10) minutes in length.

Defendants have failed to provide lawful off-duty meal periods. Meal periods are either not authorized or are interrupted or cut short due to work activities that must be performed during breaks and meal periods. Aggrieved employees are not relieved of all duty for timely (within the first five hours from the start of the shift) meal periods, or second meal period for shifts greater than 10 hours. Breaks and meal periods are often interrupted or missed due to heavy rushes of customers, and Defendants' managers routinely edit aggrieved employees' timekeeping records to reflect lawful rest breaks and/or meal periods. Regardless, Defendants would still automatically deduct 30 minutes for meal periods even when the meal period was less than 30 minutes, in violation of the meal period and minimum wage laws.

Despite denying rest and meal periods and discouraging aggrieved employees from taking them, Defendants fail to pay premiums in lieu thereof. As a result, Defendants are liable for civil penalties and wages pursuant to Labor Code sections 558, 2699(f) and 2698, *et seq.*

Failure to Reimburse Expenses

Defendants violated and continue to violate Labor Code section 2802 by failing to reimburse necessary expenses incurred in the discharge of employees' duties. Labor Code section 2802(a) provides that

An 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Aggrieved Plaintiff and aggrieved employees were required to incur expenses that were necessary to discharge their duties but were not reimbursed. For example, workers required certain personal protective equipment and tools to perform their work, such as vests, utility knives, and back belts or braces, among other things. Defendants failed to provide this and other equipment and tools, and workers were thus forced to purchase and maintain their own without reimbursement.

Defendants are liable for civil penalties pursuant to Labor Code sections 2802 and 2699, *et seq.*

Failure to Provide Compliant Wage Statements

Defendants have violated Labor Code section 226 by willfully failing to furnish wage statements that accurately show all the items required by Labor Code sections 226(a). Under section 226(a), employers are required to provide “accurate itemized statement in writing showing”: (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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....

Here, Aggrieved Plaintiff Gomez and aggrieved employees were denied wage statements that complied with the requirements above. Those wage statements failed to state accurately all hours worked, failed to state all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate; failed to state accurately the net and gross wages earned due to the failure to compensate all hours worked, pay all overtime wages, compute overtime properly, and pay rest and meal premiums, and failed to identify accurately the name and address of the employer.

As a result of violations of California Labor Code sections 226, Defendants are liable for civil penalties pursuant to California Labor Code sections 226.3, 2699(f) and 2698, *et seq.*

Unlawful Failure to Maintain Accurate Payroll Records

Defendants are required to maintain accurate payroll records pursuant to Labor Code sections 1174, 1174.5 and the Wage Order. For the reasons discussed in this letter with respect to the failure to pay for all hours worked, failure to pay overtime wages, and failure to pay rest break and meal period premiums (these sections are expressly incorporated herein), Defendants failed to keep accurate payroll records showing total hours worked daily, straight and overtime hours worked each day and week, accurate start and end of work periods and meal periods, all true applicable rates of pay and all rest break and meal period premiums owed at their respective rates.

The Employers are therefore liable for civil penalties pursuant to California Labor Code sections 1174.5, 2699(f) and 2698, *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

Defendants have violated California Labor Code sections 201 and 202 by willfully failing to timely pay all compensation due and owing to all former aggrieved employees, including Aggrieved Plaintiff Gomez, upon the termination of the employment relationship. This includes compensation for all hours worked and all minimum, overtime, and premium wages.

Pursuant to sections 203, 256 and 1197.1 of the Labor Code, former workers are now also entitled to recover up to thirty (30) days of wages due to the Defendants' "willful" failure to comply with the statutory requirements of sections 201 and 202. Additionally, because Defendants violated California Labor Code sections 201, 202 and 203 of the Labor Code, they are liable for civil penalties pursuant to California Labor Code sections 203, 256, 1197.1, 2699(f) and 2698 *et seq.*

Violation of Paid Sick Leave Law

The Employers have violated and continue to violate California Labor Code sections 246, 246.5, 247, 247.5, 248.5 by failing to provide paid sick days and violating the Healthy Workplaces, Healthy Families Act of 2014. Defendants fail to pay for sick leave at the "regular rate of pay" in the workweek when sick pay is taken, or at the average rate paid to the employee in the full pay periods of the prior 90 days of employment. As a result of its violations of Labor Code sections 226, 233, 246, 246.5, 247, 247.5, 248.5, 1174, 1174.5 and 2698 *et seq.*, the Employers are liable for civil penalties pursuant to the California Labor Code and the Healthy Workplaces, Healthy Families Act of 2014.

Defendants violated sections 223, 246, 246.5 and 248.5 by wrongfully discharging Plaintiff Gomez for taking sick leave to attend to an ailment. Gomez requested sick leave and took two days off in or around middle of December 2021. A few days after he returned to work, he was discharged by NRT with a message stating that his assignment had ended. Plaintiff alleges that the reason for his termination is that he obtained permission for and took sick leave.

CLIENT EMPLOYER NOTICE

This notice relates to the employment of non-exempt workers employed at warehouse distribution centers of National Retail Transportation, Inc. ("NRT"), National Transportation Systems, Inc., and NRS in California (hereinafter "NRT Defendants"). The violations described herein were committed against Fernando Gomez ("Plaintiff") and other similarly situated, non-exempt warehouse workers who worked for Defendants within the relevant time period (collectively "Class Members"). The NRT Defendants are referred to as "Client Employers" within the meaning of Labor Code section 2810.3, and Ameri-Staff, Inc. and other entities or individuals who provide or have provided labor to the NRT Defendants are herein referred to as "Labor Contractors" within the meaning of that provision.

ADVOCATES

FOR WORKER RIGHTS, LLP

Page 8

November 28, 2022

LWDA, National Retail Transportation, et al.

Re: Second Amended PAGA Notice; Client Employer Notice

Within the statutory period for wage claims, the NRT Defendants obtained workers from, or were provided workers by, Ameri-Staff and other Labor Contractors to perform labor within the NRT Defendants' usual course of business at warehouse distributions centers in California ("NRT Warehouses"). Plaintiff gives notice of the NRT Defendants' liability for wages on the following grounds:

The NRT Defendants operate warehouse distribution centers in California that provide distribution, fulfillment, and warehousing services for retailers such as TJ Maxx, Marshalls and others. The NRT Defendants describe their usual course of business as one providing various supply chain services, including transportation and distribution services, with a nationwide network that specializes in areas of delivery, distribution and capacity. The NRT Defendants assert they operate spacious facilities that are efficient and poised to deliver the capacity, distribution, and transportation solutions that retail, distribution, and transportation industries need. "Strategically located to enable both local and linehaul," the NRT Defendants assert online that they "have the assets and the team that will move your shipments from the port to the store shelf." They also assert that all their warehouses are protected by in-house security teams and the latest in logistics technology. The NRT Defendants employ hundreds if not thousands of workers at their NRT Warehouses for the above purposes, and they obtain such workers from multiple Labor Contractors, including Ameri-Staff, who supply workers to the NRT Defendants to perform warehouse work within the NRT Defendants' usual course of business.

Ameri-Staff, Inc. and other staffing agencies functioned as a labor contractors within the meaning of Labor Code section 2810.3, supplying workers to the NRT Defendants to perform labor within the NRT Defendants' usual course of business.

Plaintiff is informed and believes that, during the Class Period, the NRT Defendants' workforce at California NRT Warehouses has numbered in the thousands.

The NRT Defendants are liable as client employers for the payment of wages owed to Plaintiff and the Class Members he seeks to represent. The NRT Defendants are liable as a result of the violations alleged in the PAGA Notice, which is incorporated in full herein.

Plaintiff intends to allege a client employer theory of liability against the NRT Defendants pursuant to Labor Code section 2810.3.

Very truly yours,

Advocates for Workers Rights LLP



Marco A. Palau
Attorney at Law