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CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

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April 8, 2022

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Filed Online and Courtesy Copy Delivered via Certified Mail

Re: **Written Notice – Private Attorney General Act ("PAGA") – Labor Code section 2698 *et seq.***
Yolanda Martinez v. Sam's West, Inc. dba Sam's Club

PAGA Administrator:

Notice is hereby provided that, pursuant to Labor Code section 2699.3, Yolanda Martinez ("Employee") contends Sam's West dba Sam's Club ("Sam's") has violated, and continues to violate, provisions of the Labor Code and wage orders promulgated by the Industrial Welfare Commission ("IWC wage order"), including, but not limited to, Labor Code sections 201-203, 221-223, 226, 226.7, 1182, 1194, 1197, 1198, and the applicable IWC wage order.

In accordance with the required notice under Labor Code section 2699.3 of the Private Attorney General Act ("PAGA"), this letter shall serve as formal written notice to the Labor and Workforce Development Agency ("LWDA").

Employee was hired by Sam's in approximately December 2020. Employee worked for Sam's in San Bernardino, California until her date of separation in approximately February 2022. Employee was employed in the café and most recently worked in "Home Meal Solutions."

Employee is an "aggrieved employee" as defined in Labor Code section 2699(a) and brings this action on behalf of herself and all other aggrieved employees of Sam's. Employee, also on behalf of herself and all other aggrieved employees, seeks penalties under PAGA for Sam's violations of the Labor Code.

Sam's Club is an American chain of membership-only retail warehouse "clubs" owned and operated by Walmart. Sam's has employed thousands of other similarly situated individuals in California as "Associates" in its retail club locations. Associates work a variety of job positions

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inside Sam's clubs including as cashiers, stockers, meat cutters and wrappers, among other positions ("Associates").

Sam's Club is an Arkansas corporation that does business in California.

Employee and other aggrieved employees seek penalties and other compensation from Sam's for the relevant time period because Sam's:

1. Failed to pay Employee and aggrieved employees all minimum wages (Lab. Code, §§ 1182.11, 1182.12, 1194, 1197 and 1197.1);
2. Failed to pay Employee and aggrieved employees for all hours worked (Lab. Code, §§ 221-223);
3. Failed to pay Employee and aggrieved employees overtime wages (Lab. Code, § 510);
4. Failed to provide Employees and aggrieved employees with accurate, itemized wage statements (Lab. Code, § 226(a));
5. Failed to timely pay Employees and aggrieved employees all final wages in a timely manner (Labor Code, §§ 201-203).

Below please find the relevant facts and legal theories to support the aforementioned violation.

Failure to Pay for All Minimum Wages

At all times relevant hereto, California Labor Code §§1182.11, 1182.12 and 1197 and the Minimum Wage Order were in full force and effect and required that aggrieved employees receive at least the minimum wage for all hours worked.

"Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

The right to minimum wage cannot be waived. California Labor Code §1194 states:

> Notwithstanding any agreement to work for a lesser wage, 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.

Sam's willfully engaged in and continues to engage in a policy and practice of not compensating Employee and aggrieved employees for all hours worked or spent in its control.

As set forth above, Employee alleges that Sam's, as a matter of policy and/or practice, Sam's required Employee and aggrieved employees, to remain under Sam's control after they are clocked out at the end of their shift without pay, which uncompensated wait time typically ranges from 10 to 15 minutes or longer per closing shift worked.

Sam's failure to compensate Employee and aggrieved employees at all for this time results in the denial of the aggrieved employees' statutorily-mandated minimum wages for those periods of work, in violation of the Labor Code provisions cited herein.

Because of Sam's policies and practices with regard to compensating Employee and aggrieved employees, Sam's has failed to pay minimum wages as required by law. Employee and aggrieved employees frequently work time for which they are compensated below the statutory minimum, as determined by the Industrial Welfare Commission.

Labor Code §1194.2 provides that, in any action under §1194 to recover wages because of the payment of a wage less than minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

Pursuant to Labor Code §218.6 or Civil Code §3287(a), Employee and aggrieved employees are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

As a direct and proximate result of the unlawful acts and/or omissions of Sam's, Employee and aggrieved employees have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194, 1194.2 and 1197.1.

Accordingly, Sam's regularly failed to pay at least minimum wages to Employee and other aggrieved employees for all of the hours they worked in violation of Labor Code sections 1194, 1197, 1197.1 and 1198. Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Failure to Pay for All Hours Worked

At all times relevant hereto, California Labor Code §§221-223 prohibit employers from withholding and deducting wages, or otherwise artificially lowering the wage scale of an employee.

Employee alleges that as a matter of policy and/or practice, Sam's required Employee and other aggrieved employees, to remain under Sam's control after they are clocked out at the end of their closing shifts to be released from Sam's locations without pay, which resulted in uncompensated wait time ranging from 10 to 15 minutes or longer per closing shift worked. Employee alleges that sometimes she would be waiting 45 minutes.

By failing and refusing to compensate Employee and other aggrieved employees for time spent off-the-clock but subject to Sam's control while waiting to be released after closing shifts, Sam's has paid less than the agreed upon compensation owed to Employee and aggrieved employees for such uncompensated work, while purporting to pay the designated wage scale.

Employee and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Failure to Pay Overtime

California Labor Code §§ 510 and 1198, and the IWC Wage Order provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in any workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

As set forth above, Employee alleges that as a matter of policy and/or practice, Sam's required Employee and aggrieved employees, to remain under Sam's control after they are clocked out at the end of their closing shifts to be released from Sam's locations without pay, which resulted in uncompensated wait time ranging from 10 to 15 minutes or longer per closing shift worked.

By failing and refusing to compensate Employee and aggrieved employees for time spent off-the-clock but subject to Sam's control while waiting to be released after closing shifts, Sam's has regularly required Employee and aggrieved employees to work in excess of eight hours per day and/or forty hours per week, but did not compensate them at an overtime rate for all of this work.

Thus, Employee and aggrieved employees have worked overtime hours for Sam's without being paid overtime premiums in violation of the Labor Code, applicable IWC Wage Orders, and other applicable law.

Wage Statements

Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete wage records. Sam's has not provided Employee and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in section 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to section 226(a).

During the relevant time period, Sam's knowingly and intentionally provided Employee and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, Sam's issued uniform wage statements to Employee and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate.

Specifically, Sam's violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9). Because Sam's did not record the time Employee and other aggrieved employees spent working off-the-clock, Sam's did not list the correct amount of gross wages and net wages earned by Employee and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Sam's failed to accurately list the total number of hours worked by Employee and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9). For the same reason, Sam's also failed to list the correct amount of net wages in violation of section 226(a)(5).

Employee and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Failure to Timely Pay Final Wages Upon Termination

As a pattern and practice, Sam's regularly failed to pay Employee and aggrieved employees their final wages pursuant to Labor Code sections 201-203.

Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, Sam's has a company-wide practice or policy of failing to pay all accrued wages to departing employees and don't adhere to the time requirements set forth in Labor Code sections 201 and 202.

Sam's willfully failed to pay Employee and aggrieved employees the earned and unpaid wages set forth above, including but not limited to minimum wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Sam's employ.

Conclusion

Enclosed please find a copy of the class action complaint that is in the process of being filed in the Superior Court for the State of California, Alameda County. Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail to Sam's. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP

Kiley L. Grombacher, Esq.

cc: Sam's West, Inc.
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