

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency,
New Legend, Inc.
Date: May 3, 2022
Subject: *Hector Medina vs. New Legend, Inc.*

INTRODUCTION

Please take notice that Hector Medina intends to seek civil penalties against his employer, New Legend, Inc. ("New Legend") under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* ("PAGA"), on behalf of himself, the Labor and Workforce Development Agency ("LWDA"), and other aggrieved employees. New Legend is liable for these civil penalties as a result of its uniform and systematic failure to comply with California wage laws, including California Labor Code provisions relating to the payment of overtime wages and minimum wages, and providing meal and rest breaks (or payment of the statutory additional wages due) inaccurate wage statements, and waiting time penalties.

Before pursuing these PAGA penalties in a representative capacity, California Labor Code § 2699.3 requires that aggrieved employees notify their employer and the LWDA of the specific provisions of the California Labor Code allegedly violated, as well as the facts and legal grounds supporting the allegations. To that end, we submit this letter on behalf of our client, Hector Medina, and on behalf of all aggrieved employees to provide notice of the following facts and violations of the California Labor Code:

GENERAL INFORMATION

New Legend, Inc. provides transportation services and warehouse services, and has its headquarters in Yuba City, California. At all times mentioned herein, New Legend was licensed to do business in the State of California and conducted and continues to conduct substantial business in the State of California. And at all times mentioned herein, New Legend was and is an employer covered by the California Labor Code and the applicable California Industrial Welfare Commission ("IWC") Wage Order.

Hector Medina was employed by New Legend as a service mechanic from May 3, 2013 to March 10, 2022. At all times, New Legend employed Mr. Medina as an hourly non-exempt employee.

CALIFORNIA LABOR CODE VIOLATIONS

1. Failure to Provide Rest Periods

(California Labor Code §§ 226.7 and 512 and IWC Wage Orders)

Excessive workload, strict deadlines, and intense pressure to meet company goals forced Mr. Medina and other employees to delay, shorten, or forgo their rest breaks to complete their assigned tasks. Indeed, New Legend never informed Mr. Medina and other employees that they were entitled to rest breaks, and would require him to continue working without providing them with rest breaks. As a result, New Legend failed to provide Mr. Medina and other employees with a 10-minute rest period as required by California law. Mr. Medina and other employees regularly worked in excess of four hours or major fraction thereof during work days without being provided at least ten-minute rest period in which they are relieved of all duties, as required by California Labor Code §§ 226.7, 512, and 1198 and IWC Wage Orders. As a result, New Legend has violated California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order, and is liable for civil penalties under California Labor Code §§ 2698 *et seq.*

2. Failure to Provide Meal Periods

(California Labor Code §§ 226.7, 512 and IWC Wage Orders)

Due to the same workload demands described above, New Legend failed to provide Mr. Medina and other employees with 30- minute meal periods as required by California law. Mr. Medina and other employees worked more than five hours during a shift without being provided a timely half-hour meal period and/or more than ten hours in a shift without receiving a second timely half-hour meal period, as required by California Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

In addition, New Legend's policy was that all employees clock out regardless if they were relieved from all work duty. In other words, New Legend would automatically deduct an hour of pay for his supposed meal break regardless of whether he actually took his meal break. For example, New Legend would contact Mr. Medina and let him know what location to go to next while on his meal break. As a result of this, Mr. Medina was not relieved from all work duty. This required him to often only take a 20-minute break. Similar to this, Mr. Medina would often be required to take his meal break at 12 p.m., which was well after the fifth hour of working considering he began working at 5 a.m. To magnify these violations, Mr. Medina also often worked 12-14 hour shifts without receiving a second meal break.

As a result, New Legend has violated California Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order, and is liable for civil penalties under California Labor Code §§ 2698 *et seq.*

3. Failure to Pay Minimum Wage

(California Labor Code §§ 204, 1118.12, 1197.1, IWC Wage Order)

New Legend failed to pay Mr. Medina and other employees California's prevailing minimum wage for all "hours worked" by requiring Mr. Medina and other employees to "work-off-clock." For example, New Legend required Mr. Medina to be "on call", so if a management called him at

2 a.m. and advised him that a job had just came up, he was required to go and complete that job. Under California law, Mr. Medina and other employees must be compensated for all hours worked and this time that was rounded down constituted compensable “hours worked.” In addition, as discussed above, New Legend would automatically deduct one-hour of pay from Mr. Medina’s and other employees’ time records presuming that they were not working, but this was not the case. As a result, New Legend has violated California Labor Code §§ 204, 558, 1118.12, 1193.6, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order for failure to pay minimum wage for all hours worked, and is liable for civil penalties under California Labor Code §§ 558 and 2698 *et seq.*

4. Failure to Pay Overtime Wages
(California Labor Code §§ 510 and 1194, and 1198)

Under most circumstances, New Legend employed Mr. Medina and other employees for more than eight hours per day or more than 40 hours per workweek. For some weeks, New Legend required that Mr. Medina and other employees to work more than eight hours per day or more than 40 hours per week. In this instance, the non-exempt employees are entitled to receive one-and-one half times their regular hourly rate of pay for working more than four hours but less than 12 hours in a workday or over 40 hours in a workweek. Notwithstanding this law, New Legend failed to maintain a policy that compensates Mr. Medina and other employees for all hours worked, including overtime compensation and properly calculating the overtime rate as a result of the off-the-clock work discussed above.

As a result, New Legend has violated California Labor Code §§ 204, 210, 211, 510, 1194, 1197.1, and 1198 and the applicable IWC Wage Order for failure to pay overtime, and is liable for civil penalties under California Labor Code §§ 558 and 2698 *et seq.*

5. Failure to Provide Accurate Itemized Wage Statements
(California Labor Code § 226)

Mr. Medina and other employees’ wage statements were deficient, because of the violations detailed in this notice, including not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums. As a result, the wage statements provided to Mr. Medina and other employees were not accurate and do not include all of the statutorily-required information. Specifically, New Legend has violated California Labor Code § 226 by willfully failing to furnish Mr. Medina and employees with accurate, itemized wage statements. These California Labor Code violations, in turn, constitute PAGA violations.

6. Failure to Pay Waiting Time Penalties
(California Labor Code § 203)

Sections 201 and 202 of the California Labor Code requires that employers pay employees all wages due immediately if an employer discharges an employee, and within 72 hours if an employee quits his or her employment. Section 203 of the California Labor Code provides that if

an employer willfully fails to timely pay such wages the employer must, as a sanction and amount owed, continue to pay that employee's wages until the back wages are paid in full or an action is commenced. The sanction and amount owed cannot exceed 30 days of wages.

New Legend owed wages to discharged employees, such as premiums for missed meal and rest periods, minimum wage, and overtime pay for hours worked over eight hours in a workday or 40 in a workweek. New Legend's failure to pay these wages at termination was willful and constitutes a PAGA violation based on a violation of California Labor Code §§ 201-203 and 558.

7. Failure to Reimburse for Business Expenditures and Losses
(California Labor Code § 2802)

As a pattern and practice, New Legend regularly failed to reimburse and indemnify Mr. Medina and other employees for business expenses. These expenses were necessary expenditures incurred by Mr. Medina and other employees in performing their job duties. For example, Mr. Medina was required to spend a total of \$300 on the appropriate clothing to complete his job being that he was not provided a uniform for a significant amount of his employment with New Legend. In addition to this, Mr. Medina was required to buy his own tools in order to perform his job, such as, mechanic guns, sockets, and wrenches. Mr. Medina also was required to sign a document when beginning his employment where New Legend advises the employee that they would not provide tools and employee pays out of pocket. Moreover, New Legend required Mr. Medina to use his own personal cell phone in order to communicate with management, such as, receive calls, text pictures of equipment of the warehouse he was in and find out what location to arrive to next. Despite being aware of these business expenses, New Legend failed to reimburse Mr. Medina and other employees for such business expenses in violation of California Labor Code § 2802, which requires employers to "identify his or her employee for all necessary expenditures and losses incurred by employees." In turn, this constitutes a PAGA violation based on a violation of California Labor Code §§ 2800 and 2802.

CONCLUSION

In sum, New Legend has committed PAGA violations based on non-compliance with California Labor Code §§ 204, 1118.12, 1197.1 (minimum wage), 226 (inaccurate itemized wage statements), 226.7 (meal and rest break violations) 510-511, 119512 (meal breaks), 226 (wage statements), and 202-203 and 558 (waiting time penalties), expense reimbursements (2802) as well as the applicable IWC Wage Order

Mr. Medina seeks to remedy these violations by securing unpaid wages and civil penalties. Please let me know whether the LWDA intends to investigate or whether we may proceed with a civil action as representatives for the LWDA and those employees that are aggrieved. If you have any questions, please do not hesitate to contact me.

Sincerely,



Vache Thomassian, Esq.
KJT Law Group, LLP

VIA ONLINE FILING

Labor and Workforce Development Agency

Attn: PAGA Administrator

Filed at "New PAGA Claim Notice" (<https://dir.tfaforms.net/308>)

VIA CERTIFIED MAIL, RRR

New Legend, Inc.

Agent of Service for Process: Baveljit Singh Samara

325 Gabriel Ave.

Yuba City, Ca 95993