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Labor and Workforce Development Agency /
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

Via Certified U.S. Mail – Return Receipt Requested

CT Corporation System
C/O Tropicale Foods, LLC
330 North Brand Blvd., Suite 700
Glendale, California 91203

Re: Notice Pursuant to California Labor Code § 2699.3

To Tropicale Foods, LLC, and Representatives of the LWDA:

My office represents Mr. Luis Valdez Paredes (“Mr. Valdez Paredes”), a former hourly, non-exempt employee of Tropicale Foods, LLC. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 1-2001¹, which Mr. Valdez Paredes alleges Tropicale Foods, LLC, and all related entities (collectively, “Employer”), has violated, including the facts and theories to support the alleged violations.

Mr. Valdez Paredes hereby provides this notice to Employer and pursuant to California Labor Code § 2699.3, and all recent amendments relating thereto. My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employer

¹Hereinafter, when reference is made to IWC Wage Order No. 1-2001, it shall include reference to corresponding sections of IWC Wage Order Nos. 3-2001, 4-2001, 5, 2001, 8-2001, 9-2001, and any other Wage Orders that are or may be applicable.

(“aggrieved employees”) in the State of California regarding Employer’s unlawful policies and practices with respect to their employment, and more specifically, violations of California wage and hour laws, as described in detail below.

Please be advised that this letter constitutes written notice required by Labor Code §§2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the California Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to and made against Employer and any and all related and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

PRELIMINARY STATEMENT

Among other things, Mr. Valdez Paredes, alleges that Employer is liable for the following: failure to provide meal, rest and recovery periods to aggrieved employees, in violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197, Wage Order No. 1-2001, §§ 11-12, and California Code of Regulations, Title 8, Section 3395; failure to pay one additional hour of compensation to aggrieved employees at their regular rates of pay for each work day that a meal or rest period is not provided, in violation of California Labor Code § 226.7 and Wage Order No. 1-2001, §§ 11(B) and 12(B); failure to pay aggrieved employees overtime wages, and failure to properly calculate overtime wages, in violation of California Labor Code §§ 510, 1194, 1198, and Wage Order No. 1-2001, § 3; failure to pay minimum wages to aggrieved employees in violation of California Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001, § 4; failure to timely pay aggrieved employees all wages due, in violation of California Labor Code § 204; willful failure to pay discharged or quitting aggrieved employees all wages due, in violation of California Labor Code §§ 201-203; failure to provide accurate itemized wage statements to aggrieved employees, in violation of California Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of aggrieved employees, in violation of California Labor Code §§ 1174, 1174.5, and Wage Order No. 1-2001, § 7; failure to indemnify aggrieved employees for employment expenditures, and/or losses, in violation of California Labor Code § 2802; failure to implement a written Workplace Prevention Policy, in violation of California Labor Code §§6401.7 and 6401.9; failure to implement written indoor and outdoor health prevent policies and comply with California Labor Code §6721 and the

recently amended Section 3395 of Title 8 of the California Code of Regulations; and failure to provide requested employment records, in violation of California Labor Code §§ 226, 432, and 1198.5

FACTS AND THEORIES

Employer is the manufacturer of frozen ice cream and other novelty products. Employer maintains four (4) facilities in the State of California located as follows:

Corporate Office/Headquarters/Main Facility
1237 W. State Street Ontario, California 91762

Huntington Park Facility
2030 Hawkins Circle
Huntington Park, California 90255

Fresno Facility
1149 W. Nielsen Avenue, Suite 103
Fresno, California 93706

San Diego Location/Distribution/Warehouse
7825 Arjons Drive
San Diego, California 92126

Employer implemented the same unlawful policies and procedures at each of its facilities, and the California Labor Code violations as set forth herein occurred at each of Employer's facilities based upon common policies and practices provided herein.

Mr. Valdez Paredes was hired by Employer in June of 2019 to work at Employer's manufacturing and storage facilities located in Ontario, California. Mr. Valdez Paredes was employed by Employer as a Packer, an hourly, non-exempt position until his separation on October 31, 2024. Mr. Valdez Paredes's duties and responsibilities included but were not limited to, packaging ice creams, operating machinery and any other general labor indicated by employer. Mr. Valdez Paredes was earning \$16.38 as of his last day of employment. Mr. Valdez Paredes, on behalf of himself and all other aggrieved employees during the one (1) year preceding the date of this notice letter, provides notice to Employer of the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 226.7, 512 and IWC Order No. 1-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a

meal period of not less than thirty (30) minutes. Non-exempt employees are also entitled to two (2) meal periods of not less than thirty (30) minutes for a work period longer than ten (10) hours. An employer is required to pay one (1) hour of compensation for each missed or non-compliant meal periods to its non-exempt employees.

Employer regularly did not allow their non-exempt employees, including Mr. Valdez Paredes, to take a full thirty (30) minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). Among other things, Employer also did not properly notify their non-exempt employees of their rights under California law to take timely, uninterrupted meal periods (including the right to second meal periods during shifts of longer than ten (10) hours), and thus, aggrieved employees like Mr. Valdez Paredes was left in the dark as to when or for how long he could take his meal periods. Employer also implemented an unlawful meal period policy by compensating non-employment employees for interrupted meal periods only for their actual work time, as opposed to paying them legally required premium payments.

To the extent Employer had any type of policy regarding the provision of meal periods to their non-exempt employees, Employer's policies and procedures were to actively discourage such meal periods. Employer consistently denied Mr. Valdez Paredes and the other aggrieved employees compliant meal periods forcing Mr. Valdez Paredes to either skip his meal periods, take their meal periods after working longer than five (5) hours, perform work during his meal periods, return to work after taking less than a thirty (30) minute meal period or miss his meal periods entirely.

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 1-2001 by willfully failing to compensate Mr. Valdez Paredes and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided.

II. Rest Period Violations

Employer has failed to authorize and permit Mr. Valdez Paredes and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 1-2001, § 12. California Employers are required to provide a ten (10) minute rest period for every four hours worked or "major fraction" thereof. Further, California Employers are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As with meal periods, Employer's policies and practices caused Mr. Valdez Paredes and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things,

giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing and unrealistic project goals and deadlines. For example, Mr. Valdez Paredes was constantly busy with their job duties such that they could not take complete and uninterrupted rest periods, or their rest periods were interrupted and they were unable to finish their breaks. In addition, Employer did not adequately notify aggrieved employees of their rights to take rest periods, and systematically denied them the opportunity to take rest periods.

Employer has further violated California Labor Code § 226.7 and IWC Wage Order No. 1-2001, § 12 by failing to pay Mr. Valdez Paredes, and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Recovery Period Violations

Employer intentionally and knowingly failed to provide recovery periods to the aggrieved employees as required under California Labor Code § 226.7 and California Code of Regulations, Title 8, Section 3395. Employer is required to provide recovery or “cooldown” periods to non-exempt employees in order to prevent heat illness. Further, Employer is required to pay one (1) additional hour of compensation at the non-exempt employee’s regular rate of pay for each workday in which the recovery period is not provided.

Mr. Valdez Paredes and the other aggrieved employees worked in excessive heat and were not provided with recovery periods. This work is frequently performed over the course of many hours in heat exceeding 86 degrees Fahrenheit. Despite these work conditions, Employer failed to implement any policy or practice of providing proper recovery periods to their non-exempt employees.

Employer has similarly failed to make any efforts to comply with heat illness prevention regulations by providing for recovery periods or by supplying sufficient amounts of drinking water. There have been many days when Employer did not provide aggrieved employees with any water, and aggrieved employees had no knowledge they were entitled to take recovery periods and thus they never took them.

Employer further violated California Labor Code § 226.7 by failing to pay aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a recovery period was not provided.

IV. Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001, § 3, Employers

are required to compensate Mr. Valdez Paredes and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Valdez Paredes and other aggrieved employees are entitled to the protections of California Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001. Employer has failed to compensate Mr. Valdez Paredes and other aggrieved employees for all overtime hours worked by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and IWC Wage Order No. 1-2001, § 3; requiring, permitting or suffering Mr. Valdez Paredes and other aggrieved employees to work off the clock; requiring, permitting or suffering Mr. Valdez Paredes and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; failing to properly calculate the regular rate of pay for the purposes of calculating overtime pay owed and due; illegally and inaccurately recording time in which Mr. Valdez Paredes and other aggrieved employees worked; other methods to be discovered.

Employer has refused to perform its obligations to compensate Mr. Valdez Paredes and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and IWC Wage Order No. 1-2001, § 3.

V. Failure to Pay Minimum Wages and Straight Time Wages

Pursuant to California Labor Code §§ 1174, 1194, 1197, and IWC Wage Order No. 1-2001, § 4, payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

Employer has failed to pay Mr. Valdez Paredes, and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Mr. Valdez Paredes and other aggrieved employees to work off the clock; requiring, permitting or suffering Mr. Valdez Paredes, and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; illegally and inaccurately recording time that Mr. Valdez Paredes, and other aggrieved employees worked; and other methods to be discovered.

VI. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California Employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued

and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, a California employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 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.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, has required Mr. Valdez Paredes, and other aggrieved employees to work off the clock without compensation, has required them to work through their meal and rest periods without proper compensation and/or remuneration, failed to pay premium payments for missed/non-compliant meal and rest periods; and has illegally rounded the time worked by Mr. Valdez Paredes, and other aggrieved employees by rounding the time they worked in a one-sided manner in favor of Employer, it has willfully failed and continues to fail to pay wages due to Mr. Valdez Paredes, and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VII. Failure to Maintain Required Records

Employer has failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 1-2001, § 7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and provide accurate itemized statements that reflect all compensation and remuneration owed and due to them. Employer has knowledge that it is not providing its non-exempt employees with proper meal and rest periods, but omits from the wage statements such compensation and/or remuneration. Additionally, Employer requires aggrieved employees to work through meal and rest periods and work off the clock and fails to record this time or compensate them for this time.

VIII. Failure to Furnish Accurate Itemized Wage Statements

Employer has failed to provide Mr. Valdez Paredes, and other aggrieved employees with timely, accurate, and itemized wage statements (i.e., pay stubs) in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Mr. Valdez Paredes, and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, premium pay for missed meal and rest periods, all in violation of California Labor Code § 226 and

IWC Wage Order No. 1-2001, § 7. For instance, Mr. Valdez Paredes was not provided with a wage statement as a result of his employment with Employer, and was never provided with a means to obtain his wage statements during his employment with Employer.

In addition, Employer's wage statements violate California Labor Code § 226 because they omit other required information. Employer was not providing Mr. Valdez Paredes, and other aggrieved employees with proper meal and rest periods but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each missed or non-compliant meal and rest periods. In addition, Employer does not properly pay Mr. Valdez Paredes, and the other aggrieved employees overtime and fails to include reimbursement for employment-related expenses, resulting in inaccurate wage statements.

IX. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires an employers to indemnify non-exempt employees 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 employers. Employer failed to indemnify Mr. Valdez Paredes and the other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer, including but not limited to, all expenses incurred relating to the purchase of mandatory work shoes, gloves, and tools; and other items which were not reimbursed, in violation of California Labor Code §2802.

X. Failure to Implement a Workplace Violence Prevention Policy

California Labor Code §§6401.7 and 6401.9 required Employer to develop and implement a workplace violence prevention plan in accordance with newly codified Labor Code section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Employer was required to establish, implement, and maintain a Workplace Violence Prevention Plan that includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain records relating to workplace violence which includes, records of workplace violence hazard identifications, evaluations, and correction must be created and maintained for a minimum of five years; training records must be created and maintained; incident logs; and records of workplace violence incident investigations under must be maintained.

Here, Employer knowingly and willfully failed to implement a Workplace Violence Prevention Policy starting on or about July 1, 2024. Mr. Valdez Paredes, on behalf of himself and the other aggrieved employees, are entitled to recover penalties up to \$25,000 for serious violations, and up to \$158,727 for "willful" violations. See, Labor Code §§6401.7, 6401.9, 6428, and 6429.

XI. Failure to Implement Indoor and Outdoor Heat Prevention Policies

Starting on or about July 1, 2024, Employer intentionally and knowingly failed to implement Indoor Heat Prevention policies at Employer's manufacturing, storage and warehouse facilities throughout the State of California. Pursuant to California Labor Code §6721, Employer was mandated to implement an indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard.

Section 3396 required Employer to establish, implement, and maintain an effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in writing and include procedures for water provision, access to cool-down areas, temperature measurement, emergency response, and acclimatization. Employer failed to establish, implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor places of employment for Mr. Valdez Paredes and the other aggrieved employees.

Mr. Valdez Paredes is informed that during his employment with Employer, he was not aware of the implementation of any type of Indoor or Outdoor Heat Prevention Policy during their employment with Employer. As with recovery periods, Mr. Valdez Paredes was not aware that Employer implemented a Heat Prevention Policy during their employment.

Employer failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations will result in the imposition of substantial civil penalties. In particular, California Labor Code §6428 provides that any employer which violates any occupational safety or health standard shall be assessed a civil penalty of up to \$25,000 for each serious violation. In that respect, an employer who operates without an injury prevention program can be assessed heightened penalties of up to \$124,709. See, California Labor Code §6429.

XII. Failure to Provide Employment Records

California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 1-2001, § 7 require California employers to provide copies of their personnel files and certain other employment records upon their request. On November 7, 2024 and December 18, 2024, through his counsel of record, Mr. Valdez Perez requested copies of his personnel file and payroll records from Employer. An authorization form, expressly permitting the disclosure of these records to counsel, signed by Mr. Valdez Perez, was submitted to Employer along with the request. No response was received regarding the request for the payroll records and personnel file. Employer intentionally and knowingly disregard the requests made on behalf of Mr. Valdez Perez in order to conceal the extent of their wage theft.

DEMAND

Demand is hereby made that Employer shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Mr. Valdez Paredes and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that Employer shall agree to comply with all California wage and hour laws as described herein and ensure that its hourly aggrieved employees are paid proper overtime compensation and given required meal and rest periods. In addition, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of meal, recovery and rest periods each employee missed during their work shifts, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal, rest and recovery periods, as required by California Labor Code § 226.7 and the applicable wage order.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to California Labor Code §§ 510, 1194, 1198, and Wage Order No. 1-2001, § 3.
4. Employer shall agree to pay each aggrieved employee all unpaid minimum wage and straight time hours, as required pursuant to California Labor Code §§ 510, 1174, 1194, 1198, and Wage Order No. 1-2001, § 4.
5. Employer shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer pursuant to California Labor Code § 2802.
6. Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.
7. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid wages.

8. Employer shall immediately provide Mr. Valdez Paredes with his personnel file and payroll records, within ten (10) days upon receipt of this correspondence.
9. Employer shall immediately implement a Workplace Violence Prevention Policy and take all reasonable steps to reduce excessive heat at each of its facilities.
10. Employer shall immediately implement an indoor heat prevention policy consistent with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations and conduct an audit of the indoor temperatures of its warehouses since July 1, 2024.
11. Employer shall agree to pay all penalties and civil penalties due arising from the violations of the California Labor Code and IWC wage order sections referenced above and pursuant to PAGA, California Labor Code § 2698 *et seq.*

Finally, if the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice, via United States Certified Mail to:

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Very Truly Yours,



SCOTT ERNEST WHEELER

SEW/yc