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January 10, 2025

VIA ONLINE ELECTRONIC SUBMISSION

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102
SUBMITTED ONLINE

CAL/OSHA Enforcement Branch
320 West 4th Street, Room 820
Los Angeles, CA 90013
DOSHLA@dir.ca.gov
SUBMITTED VIA E-MAIL

Re: Notice Pursuant to California Labor Code § 2699.3 re Tower EV LLC

Pursuant to the Private Attorneys General Act of 2004 (“**PAGA**”), Cal. Labor Code § 2698, *et seq.*, Ms. Jennifer Young Pae provides this notice on behalf of herself and other aggrieved employees in the State of California to the Labor and Workforce Development Agency (“**LWDA**”), Division of Occupational Safety and Health (CalOSHA) and Tower EV LLC (“**Tower EV**”) of Labor Code and Industrial Welfare Commission (“**IWC**”) Wage Order violations committed by Tower EV and personally experienced by Ms. Pae. Please allow this letter to serve as a notice and a request pursuant to § 2699.3 of the California Labor Code that your agencies investigate the claims described below. If the agencies do not intend to investigate the alleged violations, we ask that you please notify us of that fact. If your agencies decide not to investigate the below-described claims, Ms. Pae intends to pursue civil penalties and injunctive relief through a court action and/or in arbitration, on behalf of herself and the other aggrieved employees against whom Labor Code and Wage Order violations were committed by Tower EV.

Introduction

Tower EV is headquartered in San Francisco, California. Ms. Pae works for Tower EV as a driver from approximately July 2024, in Los Angeles, California. During that entire time, Ms. Pae was under Tower EV’s control in accordance with strict guidelines.

Unless the agencies decide to investigate and issue citations for Tower EV’s numerous Labor Code and Wage Order violations, Ms. Pae intends to bring a representative action in court and/or in arbitration seeking civil penalties for violations of the Labor Code that are recoverable under PAGA on behalf of the State of California and all other aggrieved employees. The aggrieved employees on whose behalf Ms. Pae will file a PAGA civil action include All current and former individuals who worked for Tower EV in California as an hourly-paid or non-exempt employee.

As set forth below, Tower EV has violated and/or continues to violate, among other provisions of the California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1194, 1997, 1997.1, 1198, 2802, 6300, 6301, 6311, 6400, 6401, 6402, 6403, 6401.7, 6404, 6406, 6423, 6425, 6426, 6427, 6428, 6429, 6430, 6431, 6432, 6433, and IWC Wage Orders, including inter alia, Wage Order No. 4, and Ms. Pae has personally experienced each of these violations.

Failure to Provide Meal Periods and Rest Periods

California law requires employers to provide their employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 4. A second meal period of no less than thirty (30) minutes must be provided before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. Cal. Lab. Code §§ 226.7, 512(a); Wage Order No. 4. Further, an employer must provide an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7; Wage Order No. 4. When an employer fails to provide a meal or rest period, an hour of pay at the employee's regular rate of compensation is owed to the employee. Cal. Lab. Code § 226.7(c).

Tower EV failed to provide Ms. Pae or the other aggrieved employees with an opportunity to take timely, uninterrupted meal and rest periods of the requisite length, free from employer control. Tower EV also failed to compensate Ms. Pae and the other aggrieved employees properly for the non-compliant meal and rest periods including, inter alia, missed, short, late, and/or interrupted meal and rest periods. Tower EV also failed to pay all premium wages for the many meals and rest breaks that Ms. Pae and the aggrieved employees were deprived of. Indeed, Tower EV did not provide any meal or rest breaks or premium compensation for missed breaks to Ms. Pae or other aggrieved employees.

Failure to Pay Minimum Wages and Failure to Pay Overtime Wages

Tower EV violated California Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 4 by failing to pay Ms. Pae and other aggrieved employees at least minimum wages for all hours worked. Ms. Pae and other aggrieved employees were required or knowingly permitted to perform work "off-the-clock," uncompensated, by, for example, requiring Ms. Pae and the Aggrieved Employees to perform work before clocking-in for the day, during unpaid meal breaks, and after clocking-out for the day. By failing to pay Ms. Pae and other aggrieved employees any wages for their time spent performing work duties for Tower EV, Tower EV violated Labor Code sections 1194, 1197, and 1197.1 and Wage Order No. 4, which require employers to pay at least the legal minimum wage to their employees.

California Labor Code section 510 and Wage Order No. 4 require employers to pay no less than one and one-half times the regular rate of pay of the employee for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice the regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek. During the relevant time period, Ms. Pae and other aggrieved employees worked over 8 hours in a day and/or 40 hours in a week without overtime compensation because Tower EV failed to pay them for their work duties, as described above. On occasions when Ms. Pae and other aggrieved employees had already worked eight hours in one day, Tower EV failed to pay them all overtime compensation due. Therefore, Ms. Pae and the other aggrieved employees were entitled

to receive overtime compensation from Tower EV that Tower EV failed to pay, violating Labor Code § 510 and Wage Order No. 4.

Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor more than the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant period, Tower EV failed to pay Ms. Pae and other aggrieved employees all wages due to them, including minimum wages, overtime wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Withholding of Gratuities

Labor Code section 351 states, in relevant part, that “[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron.” Tower EV promised to pay tips to Plaintiff and the aggrieved employees, yet it withheld all or a portion of the gratuities it collected, including tips, which were given to Plaintiff and other aggrieved employees by patrons.

Failure to Timely Pay Wages Upon Termination

California 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 if an employee quits 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' 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. When “drivers” such as Ms. Pae and other aggrieved employees were terminated or quit, Tower EV willfully failed to pay them all wages to which they were entitled.

Failure to Keep Accurate Payroll Records

California Labor Code section 1174(d) requires an employer to keep at a central location in the state or at the establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant period, Tower EV failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages paid to Ms. Pae and other aggrieved employees.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code section 226(a) and Wage Order No. 4 require an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, inter

alia, (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer. Tower EV failed to provide compliant wage statements to Ms. Pae and other aggrieved employees, despite being required to do so. Accordingly, Tower EV is subject to civil penalties under Labor Code section 226.3.

Failure to Reimburse Necessary Business Expenses

Labor Code section 2802 and Wage Order No. 4 require employers to indemnify their employees for all necessary business expenses that they incur in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant period, Ms. Pae and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Tower EV. These costs include, but are not limited to, work attire, costs related to use of personal phones, and costs for car washes. Indeed, Ms. Pae and the other aggrieved employees absorbed all the costs at their own expense and without reimbursement by Tower EV. Ms. Pae and the aggrieved employees are entitled to reimbursement for all such expenses.

Failure to Furnish Safe and Healthful Employment or Place of Employment

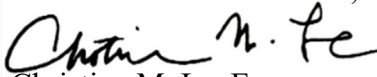
Division 5 of the Labor Code (sections 6300 *et seq.*) requires employers to furnish and assure safe and healthful employment, place of employment, and working conditions. During the relevant period, Ms. Pae and other aggrieved employees suffered safety violations while working for Tower EV, by being required to, among other things, (1) pass safety inspections of vehicles regardless of whether the vehicle was safe to operate, (2) drive in extremely unsanitary and unsafe vehicles, and (3) accept all rides which the Uber app provided to them even if the passenger or route was deemed potentially unsafe. Accordingly, Tower EV is subject to civil penalties under Division 5 of the Labor Code.

* * *

Tower EV has violated, caused to be violated, or is currently violating, numerous provisions of the California Labor Code, as described above. Ms. Pae respectfully requests that the agency investigate the above allegations, and, in any event, provide notice regarding its intent to investigate pursuant to Labor Code § 2699.3. If the agencies do not intend to investigate the alleged violations, Ms. Pae respectfully requests a letter confirming the same so that we may bring a civil action seeking civil penalties and injunctive relief under PAGA against Tower EV for the violations described in this letter. Please know that we intend to file a civil complaint and to bring the appropriate claims under Labor Code § 2699 should your office decline to investigate, or investigate but decline to issue citations, within the time frames set out in Labor Code §§ 2699.3 and 6309. Should you require anything further or have questions, please do not hesitate to contact me. Thank you for your consideration.

Respectfully Submitted,

CLARKSON LAW FIRM, P.C.


Christina M. Le, Esq.

January 10, 2025

Page 5 of 5

Via certified mail with return receipt:

Tower EV LLC
134 Alhambra Street
San Francisco, CA 94123

Tower EV LLC
c/o Daniel Munoz
134 Alhambra Street
San Francisco, CA 94123