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January 8, 2025

Via Online Electronic Filing

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Via Certified Mail (Return Receipt)

GAWFCO ENTERPRISES, INC.
Attn: Gabriel Kralik, Esq.
3669 Mt. Diablo Blvd.,
Lafayette, CA 94549

Re: Eduin A. Soto, on Behalf of Himself and all Aggrieved Employees
Re: Labor Code Violations Against Employer

Dear Labor and Workforce Development Agency and GAWFCO Enterprises, Inc.

Please be advised that Eduin A. Soto (“Claimant”) has retained this firm and Lawyers for Employee and Consumer Rights, APC to represent him for claims against his current employer, GAWFCO Enterprises, Inc. (“the Company”).

This letter shall serve as Claimant’s written notice to the Labor and Workforce Development Agency (“LWDA”) and the Company of the alleged labor code violations. Claimant claims that the Company committed against him and all other aggrieved employees in California. Claimant provides this notice in accordance with the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §2699.3. Claimant desires to file a civil action to enforce his rights under the Labor Code and seek compensation accordingly

Pursuant to Labor Code §2699(a), and by way of this letter, Claimant also intends to represent all other current and former aggrieved employees who performed work for the Company in California who have suffered at least one of the wage and hour violations described herein during their employment.

FACTUAL BACKGROUND

The Company runs multiple car washes, gas and auto service stations in Northern California. Claimant was laborer/clerk employee who would receive tips from customers and has worked for the Company since June of 2022. Under information and belief there are 35 other properties that employs up to ten labor/clerk employees who receive tips at any given time who were working under the same circumstances as the Claimant.

At various times throughout his employment with the Company, Claimant and others were forced to share a portion of all tips with their manager. As such, the true amount of tips earned were not delineated clearly on any paystubs.

Claimant was also required to pay for work related expenses, such as cell-phone use during his shifts and off-the-clock, as well as occasional use of his vehicle without reimbursement.

Finally, despite seeking all wage and hour records, personnel file records and all documents signed by the Claimant, Company declined to provide any of those records.

LABOR CODE VIOLATIONS

Illegal Deductions from Gratuity (Labor Code section 351)

Labor Code section 351 states 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, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for."

Therefore, it is illegal for companies or their management to keep a portion of the tips for themselves. Company violated this provision when it allowed Claimant's manager to take a percentage of the tip pool that was to be allocated to laborer/clerks who provide retail, food, beverage or car wash services directly to patrons.

Failure to Reimburse Business Expenses (Labor Code sections 2802 and 2804)

Labor Code section 2802(a) provides in pertinent part, "[a]n 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." Labor Code section 2802(b) states, "[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss." Accordingly, Claimant will request that he receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

Labor Code section 2804 states, "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

As set forth above, the Company required that Claimant and other aggrieved employees to carry and use cell phones for work duties and would require the occasional use of personal vehicles without reimbursement. Claimant will pursue all available remedies for the Company's violations on behalf of all aggrieved current and former employees to the extent allowed by law.

Failure to Maintain Accurate Records

(Labor Code sections 1174, 1174.5, and 1198, and
the "Records" section of the Applicable IWC Wage Order)

Labor Code section 1174 states, "[e]very person employing labor in this state shall. .. [k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, ... , employees employed at the respective plants or establishments."

The "Records" section of the applicable IWC Wage Order states that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

As set forth above, the Company violated these requirements by failing to accurately record employee hours worked including, but not limited to, the Company's failure to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the wages paid. The failure to maintain accurate records deprived Claimant of the ability to know, understand, and question the calculation, rate of pay, and hours used to calculate the wages paid to her by the Company. Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

Failure to Provide Accurate Itemized Wage Statements

(Labor Code sections 226, 226.3, and 1198)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate, itemized wage statement in writing with respect to each of its employees showing specifically: "(2) total hours worked by the employee, ..., 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." Labor Code section 226(c) that an employer has no more than twenty-one (21) days to furnish pay records upon request by an employee (or former employee)

Labor Code section 226.3 imposes a civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) and (c) in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

As set forth above, the Company failed to provide Claimant and other aggrieved employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not include the correct total regular and overtime hours worked, and all applicable hourly rates and 'the corresponding number of hours worked at each hourly rate.

Claimant will pursue all available remedies for the Company's violations on behalf of himself and other aggrieved current and former employees to the extent allowed by law.

Attorney's Fees, Costs, Interest, Liquidated Damages and Penalties
(Labor Code sections 210, 218.5, 218.6, 225.5, 226(e),
558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq.)

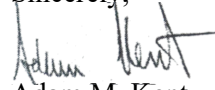
Labor Code sections 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2699, et seq., among others, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699, et seq., an aggrieved employee is entitled to collect 35% of the penalty assessment. Accordingly, the Company is liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred actual damages, costs and attorney's fees and he will continue to incur costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies, including those provided by PAGA, for these violations on behalf of himself and other aggrieved employees.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional compensation owed to him or other losses incurred by him or by any other aggrieved employee of the Company, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in his complaint.

Sincerely,



Adam M. Kent
Attorney at Law