

2 4 5 2 9

MALLISON & MARTINEZ
ATTORNEYS AT LAW
1939 HARRISON STREET, SUITE 730
OAKLAND, CA 94612
TELEPHONE: (510) 832-9999
FACSIMILE: (510) 832-1101

STAN S. MALLISON*
HECTOR R. MARTINEZ
MARCO A. PALAU**
JOSEPH D. SUTTON
ERIC S. TRABUCCO
*MEMBER OF CA, NV & OR BAR
** MEMBER OF CA & NY BAR

VIA CERTIFIED U.S. MAIL—RETURN RECEIPT REQUESTED

March 4, 2016

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

ABC Supply, Inc.
PO Box 160206
Sacramento, CA 95816

ABC Supply, Inc.
C/o Gregory F. Prentice
2710 R. Street
Sacramento, CA 95816

RE: Labor Code §2699 Notice by Aggrieved Employee

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency ("LWDA" or "Agency") to take action against ABC Supply, Inc., Rene Sungia, Don Pask and its agents, managers and supervisors (collectively "ABC"), for violations of the California Labor Code described below. I am writing on behalf of Yannick Bolling, an aggrieved employee represented by this law firm (hereinafter "Aggrieved Plaintiff") who seek to assert a PAGA claim on behalf

March 4, 2016

Letter to PAGA Administrator & ABC

Re: Labor Code §2699 Notice by Aggrieved Employee

Page 2 of 3

of the State of California and all other current or former employees who have been employed by ABC in California.

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION

PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiffs, the state and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records of patients or the facilities which include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 1197.1, and other provisions of the Labor Code, please consider this a notice to ABC's owners, supervisors, managers, agents and all other person acting on behalf of ABC and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work,. As used herein, "ABC" refers to all liable persons and entities, including owners, supervisors, managers, agents, and any other person acting on behalf of ABC who "caused" the violations at issue.

This investigation request and notice of California Labor Code violations concerns the systematic failure by ABC to pay current and former California non-exempt employees in conformance with the California Labor Code and Wage Orders. At the core of ABC's violations is a policy of failing to keep accurate time and payroll records; requiring, suffering or permitting employees to perform unpaid work outside their scheduled work time; failing to pay premium wages for all hours worked in excess of eight (8) hours and 12 hours in a day, and in excess of eight (8) hours on any seventh day of a workweek; refusing to authorize and permit rest periods or to provide premium wages in lieu thereof; failing to provide timely, complete and uninterrupted meal periods free of duty and auto-deducting wages for meal periods not provided or taken; failing to pay rest and meal period premiums to which employees are entitled for being denied rest and meal periods; requiring employees to purchase tools and garments necessary for work without reimbursement; failing to provide accurate wage statements and failing pay of all

March 4, 2016

Letter to PAGA Administrator & ABC

Re: Labor Code §2699 Notice by Aggrieved Employee

Page 3 of 3

wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt workers at ABC.

Additional facts and allegations set forth in Plaintiffs' forthcoming complaint. Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the policies described above and the violations set forth below relate to all the non-exempt employees employed at ABC's locations and worksites in California, and include:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 558, 1197.1 and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, by requiring, suffering or permitting employees to work without compensation, by unlawfully rounding employee time, by not compensating for off-the clock time, by manipulating employee time, by not compensating for certain activities such as travel, pre and post-shift activities, and by failing to pay for all hours worked within the meaning of the wage orders.
2. Failure to pay proper premium/overtime wages for shifts greater than eight hours in a day at the rate of time and one-half, and failure to pay proper premium/doubletime wages at double the regular rate of pay for shifts greater than 12 hours in a day and eight hours on the seventh consecutive workday in a workweek, in violation of Labor Code § 510 and the Wage Orders. ABC required Aggrieved Plaintiff and other current or former employees to work shifts in excess of these thresholds without proper compensation.

The Labor Code at section 510 sets forth the standard for overtime/premium wages as follows:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to

March 4, 2016

Letter to PAGA Administrator & ABC

Re: Labor Code §2699 Notice by Aggrieved Employee

Page 4 of 3

combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

3. Failure to properly provide/authorize and permit all paid ten-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code §§ 226.7, 512 and Wage Orders.
4. Failure to provide timely meal breaks of at least 30-minutes of uninterrupted, off-duty time, and failure to provide all meal breaks to which workers are entitled for shifts greater than five, six, 10 and 12 hours, as well as auto-deducting time for meal breaks not taken, and forcing on-duty meal periods without compensation; and failure to pay meal break premiums for missed meal breaks. These practices violate Cal. Labor Code §§ 226.7, 512 and the Wage Orders.
5. Failure to keep accurate time records and failure to provide accurate wage statements that reflect the actual hours worked and amounts earned, in violation of Labor Code sections 226, 1174 and the Wage Orders.
6. Failure to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202, 203, and 256 since it systematically failed to pay all wages earned and failed to pay all additional wages in lieu of providing all rest and meal periods.
7. Failure to reimburse for tools, equipment, uniforms and garments necessary for work in violation of Labor Code § 2802, and making unlawful, unauthorized wage deductions, or collection of a portion of wages, in violation of Labor Code §§ 221, 224. PAGA penalties may be collected through Labor Code 225.5.
8. Failure to pay accrued vacation wages upon termination of the employment relationship, in violation of Labor Code § 227.3.
9. Failure to produce wage statements in response to employee request pursuant to Labor Code § 226.
10. Failure to provide wage statements with accurate information as to the following:
 - (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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

March 4, 2016

Letter to PAGA Administrator & ABC

Re: Labor Code §2699 Notice by Aggrieved Employee

Page 5 of 3

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, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, 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

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code.

Aggrieved Plaintiff may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 30 days, we will assume that we may pursue this action under the theories described above against the above ABC entities described above and their managers, agents, owners and other liable persons and entities (pursuant to §210, 558 and 1197.1 (and other provisions)).

Sincerely,
MALLISON & MARTINEZ

Marco A. Palau

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®



7015 1660 0000 2309 1058

F

US POSTAGE AND FEES PAID

FIRST-CLASS

Mar 04 2016

Mailed from ZIP 94612

3 oz First-Class Mail Flats Rate



endicia.com

071M00728382

USPS FIRST CLASS

Attorneys at Law
Mallison & Martinez
1939 Harrison St. Ste 730
Oakland CA 94612

C037

RETURN RECEIPT REQUESTED

SHIP TO:

ATTENTION: PAGA ADMINISTRATOR
ACTING AGENCY SECRETARY
CALIFORNIA LABOR & WORKFORCE DEVELOPMENT
1515 CLAY ST STE 801
OAKLAND CA 94612-1463

USPS CERTIFIED MAIL



9414 7102 0082 8941 1599 88

RECEIVED
LABOR STANDARDS
ENFORCEMENT
2016 MAR -9 PM 4:17
OAKLAND