

OTKUPMAN LAW FIRM, A LAW CORPORATION

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February 27, 2025

VIA ELECTRONIC FILING

Labor & Workforce Development Agency

VIA CERTIFIED MAIL

Agave Republic, L.P.
767 Bridgeway Ste 2A
Sausalito, CA 94965
Defendant certified mail # 9589 0710 5270 2373 3688 52

VIA CERTIFIED MAIL

Agent for Service of Process
Michael Mindel
767 Bridgeway Ste 2A
Sausalito, CA 94965
Agent certified mail # 9589 0710 5270 2373 3688 52

VIA CERTIFIED MAIL

Agave Republic LP dba San Jose #9527
1098 Lincoln Ave
San Jose, CA 95125
Defendant certified mail # 9589 0710 5270 2373 3688 69

VIA CERTIFIED MAIL

Copita San Jose #9527
1098 Lincoln Ave
San Jose, CA 95125
Defendant certified mail # 9589 0710 5270 2373 3688 69

VIA CERTIFIED MAIL

Copita Tequileria y Comida
1098 Lincoln Ave
San Jose, CA 95125
Defendant certified mail # 9589 0710 5270 2373 3688 69

Labor & Workforce Development Agency
Agave Republic, L.P.
Agave Republic LP dba San Jose #9527
Copita San Jose #9527
Copita Tequileria y Comida
February 27, 2025
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Re: ***Juan Gomez v. Agave Republic, L.P., Agave Republic LP dba San Jose #9527, Copita San Jose #9527, Copita Tequileria y Comida – Compliance Letter of California Labor Code § 2698 – Private Attorneys General Act***

Dear Sir or Madam:

This office represents Juan Gomez (“Plaintiff”), a former California employee of Agave Republic, L.P., Agave Republic LP dba San Jose #9527, Copita San Jose #9527, Copita Tequileria y Comida (“Defendants”). The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client works for Defendant in Northern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to our client and other of its California non-exempt employees.

Plaintiff began working for Defendants in or around September of 2023. While working for Defendant as a Pantry Cook, Plaintiff was earning (\$24.00) dollars per hour.

Plaintiff and Defendant’s California employees were routinely unable, and not authorized to take their 10-minute rest periods and were also unable to take an uninterrupted 30-minute meal break for every shift they worked. Specifically, Plaintiff and other California employees were further forced to keep their radios on during their meal and rest breaks in case of emergencies or to address the needs of Defendants’ personnel. Because of this, Plaintiff and Defendant’s California employees were unable to take their required meal and rest breaks. Moreover, Defendants failed to pay premium wages of one hour’s pay for each missed meal and rest break to Plaintiff and Defendant’s California employees who were denied timely meal and rest breaks, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Order No. 5-2001, Section 12.

Plaintiff and Defendant’s California employees were required to work off the clock for Defendant. Defendants routinely made Plaintiff and its California employees wait in line for the time clocks to become available. The time spent waiting in line took Plaintiff on the average of 1-5 minutes to complete. Moreover, Plaintiff and Defendant’s California employees were asked to perform tasks prior to clocking in, without being compensated for it. It took Plaintiff on the average of 30 minutes to complete these tasks. Plaintiff and Defendant’s California employees were instructed to work approximately 30 minutes after they had clocked out to finish their assignments. Plaintiff and Defendant’s California employees were also asked to call Defendant to see if they were on the schedule, without being compensated for it. Defendant did not compensate Plaintiff and Defendant’s California employees if these tasks were completed outside of his regular work hours. These excess hours were not recorded on our client’s and Defendant’s California employees wage statements. Plaintiff and Defendant’s California employees should have been compensated for that time, but he was not in violation of Labor

Code Sections 510, 1194, and 1194.2. As a result, Plaintiff and Defendant's California employees were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay wages constitute violations of Labor Code § 510 and 1194.

Plaintiff also claims that Defendant has failed to pay all overtime wages due to non-exempt employees. As a result, employees are not properly compensated for work performance in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than one and one-half times the regular rate of pay. Employees of Defendant regularly work in excess of eight (8) hours in a day or more than forty (40) hours per week and do not receive overtime compensation at a rate of one and one half of their regular rate. Plaintiff and Defendant's California employees were forced to work overtime and were not paid for all hours worked including all straight time wages, and overtime wages. These failures to pay all overtime wages constitute violations of Labor Code §§ 510, 1194, 1194.2.

Defendants failed to issue Plaintiff and Defendant's California employees accurately itemized wage statements. As Defendants failed to compensate Plaintiff and Defendants' California employees with all wages due, as detailed above, their wage statements failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5). Plaintiff and the California employees wage statements' failed to accurately state the name and address of the legal entity that is the employer in violation of Labor Code § 226(a)(8), and all applicable hourly rates during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9), as a result of Defendants' failure to pay all overtime wages due. These violations also violate Labor Code §§ 226(e) and 226.3 with respect to Plaintiff and Defendants' California employees.

Defendants knowingly and intentionally failed to provide Plaintiff and Defendant's California employees timely, accurate, itemized wage statements in accordance with Labor Code § 226 and keep accurate records and required by §1174(d). The statements provided to Plaintiff and Defendant's California employees, and the records maintained by Defendants, have not accurately reflected actual gross wages earned, including pay for all hours worked, overtime, and meal/rest premiums, and total hour worked.

Our client further alleges that Defendants paid her and Defendant's California employees their final wages beyond the time frames set forth in Labor Code §§ 201 and 202. As they were not paid all wages due and owing throughout the course of their employment as a result of Defendants' failure to pay all premium wages as detailed above, at the time of their separation, they were not paid all final wages due and owing for the entirety of their employment. This violates Labor Code §§ 201-203.

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Defendant pays Plaintiff and its California employees on a weekly basis and has failed to comply with Labor Code § 204(a) which holds that wages earned on a weekly basis must be paid no later than seven calendar days following the close of the payroll period. Due to the violations described above, Plaintiff and Defendant's California employees did not receive all of their wages earned in a timely manner as required by Labor Code § 204(a)(b) and 201.3.

Defendants failed to reimburse Plaintiff and Defendant's California employees for the tools and equipment they purchased to perform work for Defendants such as a knife. Defendant failed to reimburse its California employees for using their personal cell phones for the benefit of Defendant. Labor Code section 2802 provides that "[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." As such, Plaintiff and Defendant's California employees have incurred reasonable and necessary expenses in the course of their job duties, which were not reimbursed by Defendant, in violation of Labor Code § 2802.

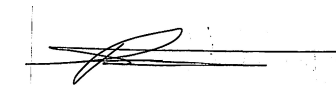
Defendants failed to pay all wages earned to Plaintiff and Defendant's California employees as a result of the unlawful employment policies and practices herein. As a result of these practices, Plaintiff and Defendant's California employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Defendants are liable under Labor Code § 210 for failure to pay wages as required by law.

We invite Defendants or its attorney(s) to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Our office awaits your response.

Very truly yours,

OTKUPMAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Roman Otkupman', is written over a horizontal line.

ROMAN OTKUPMAN