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April 29, 2025

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VIA ONLINE SUBMISSION TO LWDA

California Labor & Workforce Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000
Sacramento, CA 95814

VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Arman Marukyan, Esq.
Lawyers for Justice, PC
450 North Brand Boulevard, Suite 900
Glendale, California 91203
arman@calljustice.com

Re: *Maritza Nunez v. Compass Group USA, Inc.*
Case No. LWDA-CM-1082051-25

Response to Notice of Labor Code Violations and PAGA Penalties

Dear LWDA Representative:

Please be advised that Fisher & Phillips LLP represents Defendant Compass Group USA, Inc. ("Compass" or "the Company") with respect to the above-captioned matter. Please direct all further correspondence regarding this matter to our attention at the mailing address and/or e-mail addresses listed above.

In our capacity as the Company's labor and employment counsel, we have been asked to respond to the February 24, 2025 LWDA notice correspondence that Lawyers for Justice, PC submitted to the LWDA regarding the PAGA claims Maritza Nunez ("Claimant") is asserting on behalf of herself and other allegedly aggrieved employees.

The gravamen of Claimant's claims is that she and other "aggrieved employees" were not compensated minimum and overtime wages for off-the-clock work; were not provided legally compliant meal and rest periods or, in the alternative, were paid premium pay for non-compliant meal and rest periods; were not paid all wages owed timely during employment and upon separation of employment; were not provided accurate wage statements; were not provided appropriate "days of rest" during a seven-day workweek; were not provided reporting time pay; were not reimbursed for necessary business expenditures; and that Compass failed to maintain

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accurate records. Claimant has asserted her intention to pursue a PAGA claim against the Company and submitted the LWDA notice letter (presumably) in an attempt to satisfy the administrative requirements of PAGA.

Claimant's LWDA notice letter, however, fails to satisfy the administrative requirements of PAGA, which are set forth in California Labor Code section 2699.3(a). Pursuant to Section 2699.3(a), a plaintiff must provide both the employer and the LWDA "the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." (Emphasis added). Further, the aggrieved employee must have personally suffered from each of the violations described and alleged in the notice. Cal. Lab. Code § 2699(c)(1). In interpreting this provision, courts have explained that "the Ninth Circuit requires an exceedingly detailed level of specificity for Section 2699.3(a)(1) to be satisfied." *Soto v. Castlerock Farming & Transp. Inc.*, No. 09-cv- 0701, 2012 WL 1292519, at *8 (E.D. Cal. Apr. 16, 2012) (citing *Archila v. KFC U.S. Props., Inc.*, 420 Fed. App'x. 667, 699 (9th Cir. 2011)). In both *Soto* and *Archila*, the courts noted that LWDA letters lacking specific factual allegations are insufficient to exhaust the administrative requirements of PAGA because such letters do not adequately describe the "facts and theories" that serve as the basis of the purported PAGA violation. See *Soto, supra*, 2012 WL 1292519 at *8.

Here, Claimant's correspondence fails to identify sufficient facts to allow the Company to conduct an investigation into her claims. Among other deficiencies, Claimant has failed to include sufficient information to enable the Company to identify the other allegedly "aggrieved employees." Claimant generally alludes to "aggrieved employees," but fails to precisely define them and instead vaguely identifies them as "all current and former hourly-paid or non-exempt employees who worked for any of the above-referenced entities within the state of California." This boilerplate, ambiguous, unspecific language precludes the Company from curing, investigating, or responding to Claimant's allegations.

Moreover, Claimant has not stated the number of potential violations, the dates and times of the violations, or any other information that would allow the Company to calculate an amount for which it could resolve any alleged deficiencies. Further, Claimant fails to define the relevant time period, adding to the Company's inability to investigate these allegations.

Further, Claimant's claims are subsumed by the claims raised in the representative PAGA action entitled *Reginald Todd v. Compass Group USA, Inc.*, which was filed in Sacramento County Superior Court (Case No. 23CV007763) and which asserts similar, if not identical, claims against the Company. In fact, Claimant has made no effort to distinguish or differentiate her PAGA claims against those raised in the *Todd* litigation.

Altogether, Claimant's letter falls woefully short of the standard set forth in *Archila* and *Soto* as nothing in the letter permits the Company to appropriately review and respond to her allegations. Based on Claimant's failure to comply with the administrative requirements of PAGA, we submit this letter to request that the LWDA notify Claimant and her counsel that they may not pursue representative action claims against the Company. Alternatively, we submit this letter to provide additional information to support Claimant's administrative complaint and to preserve the Company's defenses in any civil complaint that may be filed.

Furthermore, Claimant lacks standing to bring the claims alleged in her LWDA notice correspondence. Pursuant to California Labor Code section 2699(c)(1), an aggrieved employee is a person who was employed by the alleged violating entity and personally suffered from each of the violations alleged during the statutory period. Here, Claimant provides no facts to support her contention that she actually suffered from these alleged violations, and instead makes boilerplate recitations of the law to be taken as facts. Even cursory inspection of the Company's wage statements shows payments of overtime at overtime rates, for example, which directly rebuts a claim that the Company had a policy of not paying overtime. Claimant's allegations are simply boilerplate nonsense that can be (and likely were) copy and pasted into numerous other documents. Claimant, therefore, lacks standing to bring such claims on behalf of herself or other allegedly aggrieved employees.

Finally, Claimant's claims are unmanageable. Courts are permitted to manage their dockets by, among other things, using a "vast variety of tools to efficiently manage PAGA claims." *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 594. PAGA was recently amended to expand on the requirements of *Estrada* by permitting a court to limit claims and evidence where a case is not manageable. Cal. Lab. Code § 2699.3(p)

The facts and circumstances surrounding Claimant and the allegedly aggrieved employees' employment with the Company differed vastly between jobs, roles, duties, departments, and locations. The facts here are highly individualized and raise significant individualized inquiries regarding alleged off-the-clock work and meal and rest periods. Claimant does not allege a single actual fact or describe a single fact that would support a common illegal policy in her LWDA correspondence. Allegations of unspecified off-the-clock work by unspecified employees at unspecified locations under unspecified supervisors at unspecified times is likewise contingent upon individualized factual inquiries and not subject to common proof. Where, as here, the showing required to rebut a presumption will entail individualized proof on a widescale basis, the trial court may utilize its inherent authority to prevent duplicative evidence and limit remedies. There is no evidence presented that Claimant could adjudicate these claims on a representative basis given these issues of manageability. As such, Claimant's claims lack the manageability necessary to proceed on a representative basis.

The Company is unable to consider possible cure and related responses due to the insufficient notice provided by Claimant. Please do not hesitate to contact us with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Lonnie D. Giamela".

Lonnie D. Giamela
Carol A. Ibrahim
For FISHER & PHILLIPS LLP