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February 10, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Fresia Mendoza v. Chedraui USA, Inc.*

Dear PAGA Administrator:

This office represents Fresia Mendoza in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Mendoza was an employee of CHEDRAUI USA, INC. d/b/a El Super Markets ("EL SUPER").

The employer may be contacted directly at the address below:

CHEDRAUI USA, INC.
600 CITADEL DRIVE
COMMERCE, CA 90040

Ms. Mendoza intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Mendoza seeks relief on behalf of herself, the State of California, and other persons who are or were employed by EL SUPER as a non-exempt employee in a California grocery store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

EL SUPER employed Ms. Mendoza as a non-exempt employee from approximately October 2023 to July 2024. Ms. Mendoza worked for EL SUPER as a Restaurant Checker and Restaurant Cook at its grocery store in Salinas, California. Ms. Mendoza typically worked seven (7) hours per day and six (6) days per week. Ms. Mendoza's job duties included, without limitation, operating the cash register and performing customer transactions, providing customer service, preparing and making food, labeling bottles, and cleaning.

EL SUPER committed each of the following Labor Code violations against Ms. Mendoza, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).¹ Ms. Mendoza’s relevant claims are as follows:

EL SUPER’s Company-Wide and Uniform HR Practices

CHEDRAUI USA, INC. is a Delaware corporation that operates supermarket chains for produce, meats, and packaged foods, plus discounted bulk items under various brands, including El Super. EL SUPER operates approximately 54 grocery store locations in California. Upon information and belief, EL SUPER maintains a centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt employees working for EL SUPER at grocery stores in California, including Ms. Mendoza and other aggrieved employees. EL SUPER maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Ms. Mendoza and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

¹ These facts, theories, and claims are based on Ms. Mendoza’s experience and counsel’s review of those records currently available relating to Ms. Mendoza’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Mendoza reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

EL SUPER's California grocery stores are generally similar in their layout and design and there was, and continues to be, space at service counters and cash wraps to allow for the presence and use of a seat or stool by Ms. Mendoza and other aggrieved employees during the performance of their work duties. EL SUPER could have provided Ms. Mendoza and other aggrieved employees with a suitable seat at service counters and cash wraps, with reasonable or no modification to these work areas, but instead denied and continues to deny them seats altogether or denies them suitable seats. As a result, Ms. Mendoza and other aggrieved employees are and have been forced to stand throughout the day. In addition, EL SUPER failed to expressly advise Ms. Mendoza and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Mendoza performed cashiering duties at the service counter and/or cash wrap and spent a significant portion of her day behind the service counter and/or cash wrap. Other aggrieved employees similarly spent a portion of their day at service counters and/or cash wraps performing cash register duties. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. Ms. Mendoza and other aggrieved employees could have handled cash register transactions and performed other similar tasks at service counters and/or cash wraps at any of EL SUPER's grocery stores while seated without interference with their ability to perform their job duties. However, as set forth herein, EL SUPER systematically, and on a company-wide basis, does not provide seats or does not provide suitable seats at service counters and/or cash wraps and expressly prohibits employees from sitting while working, forcing Ms. Mendoza and other aggrieved employees to stand throughout their work shifts.

EL SUPER violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Mendoza and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. EL SUPER's management did not inform Ms. Mendoza and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of EL SUPER's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Mendoza and other aggrieved employees were forced to stand during shifts and denied seats. EL SUPER's failure to provide suitable seating to Ms. Mendoza and other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

Ms. Mendoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that

“[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, EL SUPER’s California grocery stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Mendoza and other aggrieved employees during lulls in operations. For example, Ms. Mendoza experienced lulls in her work at various times during a typical shift, especially when the grocery store was not busy. During these lulls, when Ms. Mendoza was not actively performing tasks that require standing, Ms. Mendoza could have taken a moment to sit and rest her legs, back, and feet if seating was provided. EL SUPER could provide Ms. Mendoza and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seating and forces Ms. Mendoza and other aggrieved employees to stand throughout the day.

EL SUPER did not provide Ms. Mendoza and other aggrieved employees with suitable seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Mendoza and other aggrieved employees engaged in duties in which the nature of the work required standing, EL SUPER denied them the use of seats nearby during lulls in their work duties. Moreover, EL SUPER did not inform Ms. Mendoza and other aggrieved employees of their rights to a seat or stool under California law.

As a result of EL SUPER’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide suitable seats in reasonable proximity to their work areas, Ms. Mendoza and other aggrieved employees were forced to stand during shifts and denied seats. EL SUPER’s failure to provide suitable seating to Ms. Mendoza and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Mendoza and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring EL SUPER into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Ms. Mendoza, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against EL SUPER for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

Therefore, on behalf of all aggrieved employees, Ms. Mendoza seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is placed over a light gray rectangular background.

Ninel Kocharyan

Copy: CHEDRAUI USA, INC. (via U.S. Certified Mail)

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☐ Complete items 1, 2, and 3. ☐ Print your name and address on the reverse ☐		A. Signature ☒ ☐ Agent ☐ Addressee	
1. CHEDRAUI USA, INC. 600 Citadel Drive Commerce, CA 90040		Received by (Printed Name)	C. Date of Delivery
Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No			
 9590 9402 7420 2055 5430 27		3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery	
2. Article Number (Transfer from service label) 7021 1970 0001 9028 3244		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053		Domestic Return Receipt	

CHEDRAUI USA, INC.
600 Citadel Drive
Commerce, CA 90040