

July 5, 2017

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PAGA Administrator

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DEPT. OF INDUSTRIAL RELATIONS
PAGA UNIT (OAK)

Cc: Christopher W. Decker, Esq.

Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

400 South Hope Street, Suite 1200

Los Angeles, CA 90071

RE: Cabrera Galarza v. Goya of California, Inc., Case No. BC621650

To Whom It May Concern:

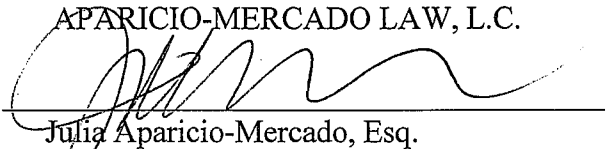
In reference to our letter sent to you on April 21, 2016 (see attached copy of letter), we have resolved this matter as to Plaintiff Antonio Cabrera Galarza only and not as to the represented PAGA claimants. The represented PAGA claimants have not been notified of this suit, and have not been made an award by judgment or other means. As a result of the resolution of Plaintiff Cabrera Galarza's claims, we will not be pursuing a PAGA penalties case further since Plaintiff Cabrera Galarza no longer has standing to bring a PAGA claim.

Further, there is no allocation for PAGA penalties in the settlement, as the parties do not seek any release of the Labor Commissioner's right to collect such penalties, or the right of any represented PAGA Claimants to seek such penalties on behalf of the Labor Commissioner. This is because Plaintiff Cabrera Galarza asserted a wrongful termination claim and individual claims for unpaid wages and resulting statutory penalties in his California Superior Court case in addition to a PAGA claim. Therefore, since the settlement affects only his rights, it will not be submitted to the court for approval, and Plaintiff Cabrera Galarza will not be remitting payment for PAGA penalties to the Labor Commissioner or to any represented PAGA Claimant.

Should the Labor Commission wish to object to this settlement, please provide actual notice of objection within 14 calendar days. Otherwise, we accept any non-response as agreement that the lack of remittance is based on an absence of PAGA penalties funding and that no future payment is owed.

Very truly yours,

APARICIO-MERCADO LAW, L.C.

By: 

Julia Aparicio-Mercado, Esq.

Attorney for Plaintiff Antonio Cabrera Galarza

April 21, 2016

U.S. Cert. Return Receipt Mail

Goya Foods of California, Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

PAGA Administrator
1515 Clay Avenue Street, Suite 801
Oakland, CA 94612

**RE: ANTONIO CABRERA GALARZA- NOTICE OF LABOR
CODE VIOLATIONS AND DEMAND PURSUANT TO
CALIFORNIA LABOR CODE SECTION 2699 ET. SEQ. AS
TO THE INDIVIDUAL AND REPRESENTED CLAIMANTS.**

Dear Sirs and Madams:

PLEASE TAKE NOTICE that pursuant to the procedures specified in California Labor Code Section 2699.3, ANTONIO CABRERA GALARZA (hereinafter "EMPLOYEE") claims that Goya Foods of California, Inc. (hereinafter referred to as "EMPLOYER" or "YOU" and/or referred to with "YOUR" and "YOURS") violated California Labor Code Sections as follows, but not limited thereto: 201-203, 226, 226.3, 226.7, 403, 404, 510, 512, 558, 1174, 1198, 2802.

FACTS:

The facts of the above named matter include, but are not limited to, the facts named or identified or referenced herein. As discovery is ongoing, ANTONIO CABRERA GALARZA and the represented claimants reserve the right to present and/or reference further evidence as it is discovered.

YOU hired ANTONIO CABRERA GALARZA as a driver from November 2014 to May 2016. Pursuant to the job duties and policies YOU set forth, you failed to pay overtime wages over forty hours a week and split shift pay to Mr. CABRERA GALARZA and the represented claimants (collectively referred to as "EMPLOYEES"). Further, YOU pushed EMPLOYEES to drive over their 11 hour limit, in violation of DOT regulations, and failed to pay them full wages to keep said hours off the books. As a result, YOU failed to provide accurate wage statements and to keep accurate records for the EMPLOYEES. Lastly, you wrongfully terminated EMPLOYEE for complaining of the foregoing practices in violation of Labor Code Section 1102.5.

Notice of Labor Code Violations

Labor Code Sections 226.3: EMPLOYER failed to furnish, at the time of each payment of wages, to each EMPLOYEE, an accurate itemized wage statement for all hours worked by the EMPLOYEE and to do all things required by this statute. Your policy and practice is to refuse to furnish to each of YOUR EMPLOYEES, at the time of each payment of wages, an accurate itemized wage statement for all hours worked by the EMPLOYEES, up to and exceeding, 40 hours per week.

Your policy and practice violates Labor Code Section 226. Labor Code Section 226 requires the employer to provide a statement with each payment of wages that includes: 1) Gross earnings, 2) Total hours worked, 3) Number of piece rate units earned, 4) Deductions, 5) Net wages, 6) Dates paid for, 7) Name of employee and last four digits of employee's Social Security number, 8) Name and address of the legal entity of the employer, and 9) a list of all hourly rates worked by the employee, up to and exceeding 40 hours per week, in the corresponding period.

Your policy and practice of failing to furnish to each employee an accurate itemized wage statement for all hours worked by the EMPLOYEES, according to law, places you in violation of Labor Code Section 226. Further, Labor Code Section 226.3 states Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. YOU are in violation of Labor Code Section 226 and therefore EMPLOYEES will be pursuing penalties pursuant to Labor Code Section 226.3.

Labor Code Sections 1174 and 1174.5: EMPLOYER failed to maintain records required by Labor Code Section 1174. Labor Code Section 1174 requires that every person employing labor in this state shall keep in a central location, whereby it shall be accessible to the Commissioner, *accurate and complete* records of the following: a list of employee names and address and of minors under subsection (c), employment records, payroll records showing the hours worked daily by and the wages paid pursuant to subsection (d), and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.

According to YOUR policies and practices, YOU failed to maintain records as required by Labor Code Section 1174. Pursuant to Labor Code Section 1174.5, YOU are subject to penalties for failure to maintain employee contact information and/or accurate and complete payroll record. Therefore, EMPLOYEES shall pursue said penalties for failure to comply with Labor Code Section 1174.

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 2710 Gateway Oaks Drive, Suite 150N
 City, State, ZIP+4®
 Sacramento, CA 95833

PS Form 3800, April 2016 PSN 7530-02-000-9077 See Reverse for Instructions

Calvin Balares v. Goya

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OAKLAND, CA 94612

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Calvin Balares v. Goya