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April 18, 2025

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VIA ONLINE SUBMISSION TO LWDA

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

VIA CERTIFIED MAIL AND ELECTRONIC MAIL

Kane Moon, Esq.
Moon Law Group, PC
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Re: *Thelma Samantha Palmerin v. Self-Help Services Corp.*
LWDA Claim No. LWDA-CM-1086523-25
Response to Notice of Labor Code Violations and PAGA Penalties

To whom it may concern:

Fisher & Phillips LLP is counsel for Self-Help Services Corporation ("Self-Help") in this matter. Please direct all further correspondence regarding this matter to our office as addressed above.

The purpose of this letter is to respond to the Notice of Labor Code Violations and PAGA Penalties (the "Notice") submitted to the California Labor and Workforce Development Agency ("LWDA") by Thelma Samantha Palmerin ("Palmerin") on March 16, 2025, bearing LWDA No. LWDA-CM-1086523-25. The gravamen of Ms. Palmerin's claims is that she and other employees were not allowed meal and rest periods; were not paid premium pay for non-compliant meal and rest periods; were not compensated for all hours worked, including overtime, for time spent working off the clock; were not reimbursed for business expenses; were not provided accurate wage statements; were not paid all accrued vacation wages at termination; were not timely paid all wages owed upon separation of employment; were not timely paid wages twice per month during employment; and that Self-Help failed to maintain accurate records of hours worked and meal periods. Ms. Palmerin has stated her intention to pursue a PAGA claim against Self-Help and has submitted the March 16, 2025 letter.

Fisher & Phillips LLP

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As the LWDA is well aware, prior to initiating any PAGA claim in state or federal court, an allegedly aggrieved employee must strictly comply with the notice requirements contained in the California Labor Code. (Cal. Lab. Code § 2699.3.) Indeed, proper notice is a “condition” of filing a PAGA lawsuit. (*Brown v. Ralphs Grocery Co.* (2018) 28 Cal. App. 5th 824, 838; *Williams v. Sup. Ct.* (2017) 3 Cal.5th 531, 545.) “The evident purpose of the notice requirement is to afford the relevant state agency, the Labor and Workforce Development Agency, the opportunity to decide whether to allocate the scarce resources to an investigation, a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations. Notice to the employer serves the purpose of allowing the employer to submit a response to the agency (see Cal. Lab. Code § 2669.3, subd. (a)(1)(B)), again thereby promoting an informed agency decision as to whether to allocate resources toward an investigation.” (*Khan v. Dunn-Edwards Corp.* (2018) 19 Cal. App. 5th 804, 809.)

“A key inquiry upon receipt and review of the notice is whether sufficient ‘facts and theories’ have been asserted regarding the alleged Labor Code violations.” (Simmons, Richard J., et al. “California’s Private Attorneys General Act (PAGA) Litigation and Compliance Manual (2020) § 10.1(a), p. 191.), quoting Cal. Lab. Code § 2669.3, subd. (a)(1)(A).) “The notice requirement demands more than ‘a string of legal conclusions with no factual allegations or theories of liability to support them’ and the failure to meet the required standard may result in the dismissal of PAGA claims.” (Simmons, *supra*, § 10.1(a), p. 191, quoting *Alcantar v. Hobart Serv.* (9th Cir. 2015) 800 F.3d 1047, 1057, interpreting California law.) Interpreting the statute, 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 and Transport, Inc.* (E.D. Cal. Apr. 16, 2012) No. CIV-F-09-0701, 2012 WL 1292519 at *8 (emphasis added), citing *Archila v. KFC U.S. Props., Inc.* (9th Cir. 2011) 420 Fed. Appx. 667, 699.) In *Soto* and *Archila*, LWDA letters that lacked specific factual allegations were held insufficient to exhaust the administrative requirements of PAGA because they did 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.)

In the instant matter, Palmerin generically alleges that Self-Help “maintained a policy and practice of not paying [Palmerin] and the Aggrieved Employees for all hours worked” and that she and the allegedly Aggrieved Employees were “required to work off-the-clock” and were therefore allegedly not paid for all wages owed, including overtime. This allegation consists entirely of legal conclusions without any requisite “facts.” (See *Sinohui v. CEC Entm’t, Inc.* (C.D. Cal. 2016) 2016 U.S. Dist. LEXIS 85652, at **6–8, 2016 WL 3406383, at *3, citing California law (PAGA claim dismissed where the LWDA letter provided nothing more than a series of legal conclusions).) In asserting these conclusions, Palmerin fails to provide the LWDA with any facts evidencing how she knows that Self-Help “maintained a policy and practice of not paying [Palmerin] and the Aggrieved Employees for all hours worked.” Also, in asserting these conclusions, Palmerin fails to provide the LWDA with any facts that it could use to determine whether she and other employees were actually “required” to work off-the-clock, whether Self-Help knew that she or other employees were performing any “work” off-the-clock, or whether Self-Help was legally required to pay her or other employees for any off-the-clock “work” that they allegedly performed.

Likewise, Palmerin alleges meal and rest period violations because Self-Help failed to authorize and permit Palmerin and the allegedly Aggrieved Employees to take timely and duty-free meal and rest periods and failed to “adequately inform” employees of their right to take such breaks but fails to include the facts and theories supporting the allegation (Cal. Lab. Code § 2669.3, subd. (a)(1)(A)) in order “to determine what policies or practices are being

complained of so as to know whether to fold or fight.” (*Alcantara v. Hobart Service* (9th Cir. 2015) 800 F.3d 1047, 1057, interpreting California law.) It is altogether unknown whether Palmerin alleges that Self-Help (or any specific employee of Self-Help) affirmatively instructed employees not to take meal and/or rest periods, alleges that Self-Help refused the requests of any employees to take meal and/or rest periods, or alleges that any employees actually missed any of their required meal and/or rest periods.

Similarly, in alleging that Self-Help failed to reimburse her for her necessary business expenses, Palmerin asserts that she incurred certain expenses, but does not allege any facts that would allow the LWDA to evaluate whether those expenses were “necessary” or were incurred due to the “directions of the employer.” (Cal. Lab. Code § 2802, subd. (a).) Specifically, she does not identify her allegedly required responsibilities, how the expenses she allegedly incurred were allegedly “necessary” to perform those job responsibilities, what employee(s) allegedly directed her to incur those expenses, whether she asked Self-Help to provide her with the items that she allegedly purchased, or whether she informed Self-Help that she incurred those allegedly necessary expenses. Instead, Palmerin simply asserts the legal conclusion that she was “required” to incur those expenses without providing any facts in support thereof.

Next, Palmerin alleges that Self-Help failed to pay her and other employees all wages that were due to them upon separation of employment. In support of this claim, Palmerin asserts only the legal conclusion that Self-Help failed, and continues to fail, to pay Palmerin and former allegedly Aggrieved Employees, without abatement, all wages required to be paid by California Labor Code sections 201 and 202. Accordingly, her claims in this regard must be considered legally deficient due to her failure to provide the specific “facts and theories to support the alleged violation.” (Cal. Lab. Code § 2699.3, subd. (a)(1)(A).) Palmerin’s claims regarding failure to pay all accrued vacation wages at termination and failure to maintain accurate records of hours worked and meal periods suffer the same infirmities described above.

Furthermore, while Palmerin alleges that Self-Help failed to provide her and other employees with accurate wage statements pursuant to California Labor Code section 226, her claim in this regard is again entirely supported by legal conclusions. In relevant part, Palmerin alleges that the wage statements that she and other employees received “[failed] to correctly identify hourly rates, [failed] to correctly list gross wages earned, and [failed] to correctly list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.” However, Palmerin does not identify with specificity how such rates or amounts were incorrect or provide any facts sufficient to evaluate her contention that such rates or amounts were incorrect. Furthermore, while Palmerin claims that her and other employees’ wage statements did not correctly identify the amount of wages “earned,” she does not specify whether she means that they did not correctly list the amount of wages that she and other employees were entitled to receive or whether they did not correctly list the amount of wages that she and other employees were actually paid (which is all that is required by law). Accordingly, because it is impossible for the LWDA to evaluate Palmerin’s claims or for Self-Help to substantively respond thereto, they must be considered deficient as a matter of law. (Cal. Lab. Code § 2699.3, subd. (a)(1)(A).)

Finally, as the LWDA can see from the face of the Notice, Palmerin’s claim for failure to timely pay wages during employment is supported only by legal conclusions (“during all such times, [Self-Help] systematically failed and refused to pay the employees all wages due, and failed

to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by [Self-Help], all wages for all rest periods not authorized and permitted by [Self-Help], and all wages for all hours worked”), is entirely unsupported by any facts and is entirely derivative of Palmerin’s other insufficiently alleged claims. Like those other claims, it must therefore be considered deficient due to its failure to provide the specific “facts and theories to support the alleged violation.” (Cal. Lab. Code § 2699.3, subd. (a)(1)(A).)

Beyond the foregoing, Palmerin’s letter is devoid of any allegation regarding the number of potential violations, the dates and times of the violations, and/or any manner in which an amount to resolve any deficiency could be calculated. Additionally, the correspondence does not allow Self-Help to identify specific employees whose rights have been allegedly violated. Notably, throughout the letter, Palmerin vaguely refers to “aggrieved employees,” which is vaguely defined as “all other current and former aggrieved employees who worked for [Self-Help] in California at any time within the applicable statutory period.” As a result, the term “aggrieved employees” is unclear. And, such vague and generalized language prohibits Self-Help from curing, investigating, or responding to Ms. Palmerin’s allegations.

Notably, Self-Help maintains compliant timekeeping and meal and rest period policies, which permit and encourage employees to take all legally required breaks and provides for the payment of meal period premiums whenever a rest or meal period is missed or is untimely. In addition, Self-Help’s timekeeping policy requires employees to remain clocked-in during all hours worked and strictly prohibits off the clock work. Finally, Self-Help provides for reimbursement of business expenses. Ms. Palmerin acknowledged understanding and receipt of Self-Help’s timekeeping and meal and rest period policies. Thus, contrary to Ms. Palmerin’s allegations, she was provided the opportunity to take her meal and rest breaks and acknowledged in writing that she was aware of the Company’s meal and rest period policies and policies against off-the-clock work.

For reasons including, but not limited to, those set forth above, Palmerin’s letter falls short of the *Archila* and *Soto* standards. Specifically, Palmerin has failed to describe the facts underlying her allegations with sufficient specificity and detail as to permits Self-Help to substantively respond thereto or the LWDA to evaluate the legal merit thereof. Based on Palmerin’s failure to comply with PAGA’s administrative requirements, Self-Help submits this letter to request that the LWDA notify Palmerin and her counsel that she may not pursue representative action claims against the Company. Alternatively, Self-Help requests that the LWDA require Palmerin to provide additional information to support her administrative complaint and to preserve the Company’s defenses in any civil complaint that Palmerin might subsequently attempt to file.

California Labor and Workforce Development Agency
Kane Moon, Esq.
April 18, 2025
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If you have any questions regarding the above, please do not hesitate to contact our office at any time.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Anet Castro Drapalski'.

Anet Castro Drapalski
Harrison Thorne
Carol A. Ibrahim
For FISHER & PHILLIPS LLP