

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

April 18, 2025

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Rosa Garcia vs. Smart & Final Stores, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Ms. Rosa Garcia (“Ms. Garcia”) in claims arising from her employment with Smart & Final Stores LLC, a California limited liability company, and DOES 1 through 100 (“Defendants”). Ms. Garcia is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. For purposes of this letter, “aggrieved employees” includes all of Defendants’ employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a chain of retail grocery stores. Ms. Garcia has been employed by Defendants at various locations since approximately September 1997, as both a Night Crew Lead and a Service Manager. Ms. Garcia’s job duties include stocking up the shelves, providing general customer service, and supervising small teams of other non-exempt employees.

Defendants utilized a timekeeping system, which upon information and belief, resulted in Ms. Garcia and other aggrieved employees not being compensated for all hours actually worked and/or subject to Defendants’ control. Specifically, before Ms. Garcia and other aggrieved employees were allowed to clock in to Defendants’ electronic timekeeping system at the start of their shift, while off the clock and subject to Defendants’ control, Ms. Garcia and other aggrieved employees were required to undergo bag checks at the cashier station every time they brought food or other items from home into Defendants’ stores that were also sold at the store, in a loss prevention effort by Defendants. Ms. Garcia and other aggrieved employees were specifically told that they could only clock in using Defendants’ electronic timekeeping system after undergoing these initial bag checks, and therefore, upon information and belief, Ms. Garcia and other aggrieved employees were not properly credited and paid with all regular and overtime hours actually worked. As a result of Defendants’ timekeeping policies/practices, Ms. Garcia and other aggrieved employees consistently performed compensable work off-the-clock for which they were not compensated, resulting in unpaid minimum and overtime wages.

Defendants fail to provide Ms. Garcia and other aggrieved employees with all legally-compliant meal periods due to Defendant's unlawful meal period policies/practices that fail to provide timely, duty-free 30-minute meal periods, including second meal periods when working shifts over 10.0 hours. Ms. Garcia's meals are frequently provided after the end of the fifth hour and tenth hour worked, respectively, due to work demands and staffing deficiencies placed by Defendants on Ms. Garcia and other aggrieved employees. On occasions when Ms. Garcia and other aggrieved employees are not provided with all lawful meal periods to which they are entitled, Defendants fail to pay Ms. Garcia and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code section 226.7.

Ms. Garcia was not authorized and permitted to take duty-free 10-minute rest periods for every 4 hours worked (or major fraction thereof) due to Defendants' rest period policies/practices. Specifically, Defendants fail to authorize a "net" of at least 10-minutes for rest periods after factoring in the time that it took to walk to and from the breakroom. Under California law, Defendants are required to authorize and permit a "net" rest period of 10-minutes that begins when the employee reaches a rest area away from his or her workstation and must be uninterrupted during the duration of the rest period. *See e.g.*, Division of Labor Standards Enforcement Manual ("DLSE Manual") §45.3.3; *Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE Manual § 45.3.3 for the proposition that "the rest period begins when the employee reaches an area away from the workstation that is appropriate for rest"); *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260 ("[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time"). Specifically, on occasions when Ms. Garcia and other aggrieved employees are able to take a rest period, Defendants only authorize and permit Ms. Garcia and other aggrieved employees to take rest periods of exactly 10 minutes in length, beginning the moment they leave their workstation and requiring Ms. Garcia and other aggrieved employees to return to their workstations by the completion of the 10-minutes. However, after leaving their workstations, Ms. Garcia and other aggrieved employees are required to walk to and from the breakroom, thereby shortening their purported rest periods to less than 10 minutes "net" in the designated rest area away from the employee's workstation. Further, Defendants only authorize and permit up to one rest period per workday, regardless of the length of the work shift, and therefore fail to authorize and permit Ms. Garcia and other aggrieved employees to take a second 10-minute rest period for shifts in excess of 6.0 hours. On occasions when Ms. Garcia and other aggrieved employees are not authorized and permitted to take all lawful rest periods to which they are entitled, Defendants fail to pay Ms. Garcia and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

Further, Defendants have failed to reimburse Ms. Garcia and other aggrieved employees for all necessary business expenses incurred pursuant to Labor Code § 2802. Defendants frequently call Ms. Garcia and other aggrieved employees on their personal

cellular phones with work-related questions or updates, and Defendants' supervisors maintain and participate in group text message conversations with Ms. Garcia and other aggrieved employees regarding work-related topics. Ms. Garcia and other aggrieved employees are also required to download cell phone applications, including the "Zenput" application, in order to answer questions and take pictures of the store's performance throughout the day to send to Defendant's corporate offices. Despite requiring Ms. Garcia and other aggrieved employees to incur these expenses, Defendants did not reimburse Ms. Garcia and other aggrieved employees for any portion of these expenses in violation of Labor Code § 2802. *See Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137.

As a result of Defendants' failure to pay all minimum wages, overtime wages, meal period premium wages, and rest period premium wages, Defendants maintained inaccurate payroll records, and issued inaccurate wage statements to Ms. Garcia and other aggrieved employees.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 7 ("Wage Order 7"):

Overtime Wage Violations

Defendants were required to properly pay Ms. Garcia and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per workday and/or in excess of 40 hours of work in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of twelve hours each workday and/or for work in excess of eight hours on the seventh consecutive day of work in the workweek. Defendants caused Ms. Garcia and other aggrieved employees to work overtime hours but did not compensate Ms. Garcia or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Minimum Wage Violations

Wage Order 7, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Ms. Garcia and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 7.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Garcia and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 7, § 11. As a result, Ms. Garcia and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As described above, Defendants also failed to authorize and permit Ms. Garcia and other aggrieved employees to take all required and compliant rest periods. *See* Labor Code §§ 226.7, 516, and 558; Wage Order 7, § 12. As a result, Ms. Garcia and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that all rest periods were not authorized and permitted. *See* Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants failed to indemnify Ms. Garcia and other aggrieved employees for all necessary business expenses incurred, including, among other things, cell phone reimbursement. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Ms. Garcia and other aggrieved employees are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Ms. Garcia and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate by the employee, and the correct name of the employer, in violation of Labor Code § 226 *et seq.* Defendants’ failures in furnishing Ms. Garcia and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants’ reported data and whether they have been paid all wages earned.

As an “aggrieved employee”, Ms. Garcia will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Ms. Garcia’s own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Failing to pay Ms. Garcia and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Ms. Garcia and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide Ms. Garcia and other aggrieved employees all legally required meal periods, and failing to pay meal period premium wages to Ms. Garcia and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Ms. Garcia and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premium wages to Ms. Garcia and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Ms. Garcia and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Ms. Garcia and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- g. Failing to pay Ms. Garcia and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Ms. Garcia and other aggrieved employees, in violation of Labor Code §§ 558 and 1174.

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Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "F. W. Schmidt", is positioned below the typed name.

Fletcher W. Schmidt, Esq.

cc: Smart & Final Stores LLC, c/o C T Corporation System, Agent for Service of Process, 330 N. Brand Blvd. Suite 700, Glendale, CA 91203 (via certified mail)