



April 16, 2025

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorneys General Act – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Gogh Delivery, LLC
Alfred Landegger, Agent for service of process
15760 Ventura Blvd., Suite 1200
Encino, CA 91436

Chris Turner
Alfred Landegger, Agent for service of process
15760 Ventura Blvd., Suite 1200
Encino, CA 91436

Re: *Kevin DeWar v. Gogh Delivery, LLC, et al.*

Dear California Labor and Workforce Development Agency, Gogh Delivery, LLC, and Chris Turner:

Please be advised that Torus LLP represents Kevin DeWar (“Claimant”). Claimant intends to seek penalties individually and on behalf of all other aggrieved employees against his former employer Gogh Delivery, LLC and Chris Turner (“Employer”) pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698 *et seq.* This correspondence serves as Claimant’s written notice by online filing with the Labor and Workforce Development Agency (“LWDA”) and by certified mail to the Employer of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code Section 2699.3(a)(1).

Specific Provisions of the Labor Code Alleged to Have Been Violated

Claimant alleges Employer has violated Labor Code Sections 96, 201, 202, 203, 204, 206, 210, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 246, 351, 353, 510, 512, 558, 558.1, 1171, 1174, 1174.5, 1811, 1815, 1194, 1194.2, 1197, 1197.5(k), 1198, 1199, 2800 and 2802.

Facts and Theories Supporting the Alleged Violations

Employer employed Claimant as a non-exempt employee in California within the past year. Specifically, Employer employed Claimant as a delivery worker whose job duties included but were not limited to delivery of food order via foot or driving, coordinating deliveries, communicating with Employer's clients, and other delivery duties.

Chris Turner is a managing member of Gogh Delivery, LLC. During the PAGA period, Mr. Turner was involved in Gogh Delivery's day-to-day operations, including creating work schedules; supervising employees; and implementing the policies and practices that violated or caused to be violated the applicable IWC Wage Order provisions regulating minimum wages or hours and days of work, as well as Labor Code Sections 203, 226, 226.7, 1194, and 2802 as explained below. Thus, Mr. Turner is liable for these Labor Code and IWC Wage Order violations pursuant to Labor Code Section 558.1.

Employer employed and/or currently employs other aggrieved employees as non-exempt employees in California. The aggrieved employees consist of all non-exempt employees employed by Employer during the "PAGA Period," which is defined as commencing from one year prior to the submission of this letter to the LWDA and certified mailing to Employer through the present.

During the PAGA Period, Employer failed to pay Claimant and other aggrieved employees minimum, regular, overtime, and/or double time wages for all hours worked at the legally mandated rates. During the PAGA Period, Claimant and other aggrieved employees regularly worked more than eight (8), 10, and/or 12 hours per workday, over 40 hours per workweek, and/or seven straight workdays in a workweek (in violation of Labor Code 551 and 552). Employer's practices and policies deprived Claimant and other aggrieved employees of minimum, regular, overtime, and/or double time wages for work they performed off the clock. Employer required Claimant and other aggrieved employees to complete work-related tasks off the clock. Furthermore, Employer rounded Claimant and other aggrieved employees' hours worked, thereby depriving them of wages for all hours worked at the legally mandated rates. Employer did not compensate Claimant and other aggrieved employees for all hours worked because Claimant and other aggrieved employees were regularly on-duty during their meal and/or rest periods. For example, Employer required Claimant and other aggrieved employees to answer their cellphone, radio or other communication device during meal and/or rest periods or while they were off the clock. Employer also failed to compensate Claimant and other aggrieved employees for driving and travel time in between work orders. Employer also regularly required Claimant and other aggrieved employees to remain on the premises or on-call and complete work-related duties after Claimant and other aggrieved employees had clocked out of their shifts. Finally, Employer failed to accurately calculate the regular rate of pay by, among other things, failing to include a remuneration when calculating the rate of pay for overtime, double time, meal and rest period premiums, sick pay, and vacation pay. Accordingly, Employer failed to pay Claimant and/or other aggrieved employees the proper minimum, regular, overtime, and double time wages for all hours worked, sick pay, and vacation pay, in violation of Labor Code Sections 204, 206, 210, 226.2, 227.3, 246, 510, 551, 552, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1171, 1774, 1811, and 1815 the applicable IWC Wage Orders and California Code of Regulations, and any applicable local or municipal ordinances or regulations.

During the PAGA Period, Employer failed to authorize and permit and/or make available to Claimant and other aggrieved employees timely off-duty 30-minute meal periods within the appropriate time intervals required by Labor Code Section 512 and Section 11 of the applicable IWC Wage Order(s). Specifically, Claimant and other aggrieved employees frequently had their meal periods shortened, interrupted, late, and/or missed altogether due to Employer's practice of requiring Claimant and other aggrieved employees to remain on the premises and prioritizing work demands over taking compliant breaks. Claimant and other aggrieved employees were also required to carry and answer their cell phone, pager, walkie talkie or radio during their purported meal periods. Employer also failed to authorize and permit and/or make available to Claimant and other aggrieved employees second meal periods when they worked more than 10 hours. Moreover, for any that were provided, Employer rounded Claimant and other aggrieved employees' time punches for meal periods. Accordingly, Employer failed to authorize and permit and/or make available to Claimant and other aggrieved employees timely, uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Claimant and other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they were denied a compliant meal period, in violation of Labor Code Sections 226.7 and 512, and the applicable IWC Wage Orders.

During the PAGA Period, Employer failed to authorize and permit and/or make available ten-minute rest periods for every four (4) hours or major fraction thereof worked. Employer failed to implement a compliant rest break policy and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. Claimant and other aggrieved employees missed their rest breaks or had them interrupted or governed by Employer's practices and policies. Specifically, Employer failed to schedule compliant rest breaks for Claimant and other aggrieved employees and Claimant and other aggrieved employees were regularly not authorized and permitted to take rest breaks. Additionally, Claimant and other aggrieved employees were also required to carry and answer their cell phone, pager, walkie talkie or radio during their entire shift. Employer also failed to adopt and implement a practice of providing third rest breaks when Claimant and other aggrieved employees worked over 10 hours. Notwithstanding the above rest break violations, Employer failed to compensate Claimant and other aggrieved employees with an additional hour of pay at their regular rate of pay for every day in which they suffered a rest period violation. Accordingly, Employer violated Labor Code Section 226.7 and the applicable IWC Wage Orders.

During the PAGA Period, Employers failed to properly pay out Claimant and other aggrieved employees gratuities and/or tips earned during regular working hours. Specifically implemented a policy where Employers made unlawful deductions and distributions of Claimant's and other aggrieved employees' earned tips/gratuities. In addition, Employee is informed and believes, and based thereon alleges, that Employer permits and/or permitted patrons to pay gratuities by credit card but failed to pay Employee and/or Aggrieved Employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions, for any credit card payment processing fees that may be charged to the employer by the credit card company by not later than the regular payday following the date the patron authorized the credit card. In addition, Employer failed to keep accurate records of all gratuities received by Employer and made those open to inspection at all reasonable hours. Accordingly, Employers violated Labor Code Section 351, 353, and 1198.

During the PAGA Period, Employer implemented policies, practices, and rules to restrict Claimant and the aggrieved employees' speech, protected activity, and the disclosure of information beyond the limited categories of information protected by law, and, therefore, Employer have violated California's anti-gag rule. Several provisions of California law, taken together, "establish as a minimum employment standard an employee anti-gag rule." *Doe v. Google Inc.*, 54 Cal.App.5th 948, 961 (2020). For example, California law protects whistleblowers. Labor Code Section 1102.5(a) makes it unlawful for an employer to adopt or enforce a policy or rule that prevents employees from disclosing information about reasonably suspected violations of the law to persons with the power to address the problem, *e.g.*, another employee who has the authority to investigate, discover, or correct the legal violation. *Doe*, 54 Cal.App.5th at 958. California law also protects a broad array of employee speech and activity unrelated to whistleblowing. Subdivision (k) of Labor Code Section 96 prohibits employer retaliation for "'lawful conduct occurring during nonworking hours away from the employer's premises,' so employers do not seek to control the non-work aspects of their employees' lives." *Doe*, 54 Cal.App.5th at 958 (citations omitted). Labor Code Sections 232, 232.5, and 1197.5(k) generally outlaw employer prohibitions on the disclosure or discussion of wages and working conditions. Accordingly, Employer's policies and practices violate, *inter alia*, subdivision (k) of Section 96, Sections 232 and 232.5, and subdivision (k) of Section 1197.5(k), and other California laws.

During the PAGA Period, Employer failed to reimburse Claimant and other aggrieved employees for all business expenses incurred for Employer's benefit. For example, Employer failed to reimburse Claimant and other Aggrieved Employees for use of their cell phone to carry out their work duties and use of applications required by Employer. Employer also failed to reimburse Claimant and other Aggrieved Employees for use of their personal vehicles and purchase of equipment to complete deliveries. Accordingly, Employer violated Labor Code Sections 2800 and 2802.

During the PAGA Period, Employer failed to calculate and pay sick pay at the regular rate of pay for the workweek in which Claimant and other aggrieved employees used paid sick time, or by dividing the Claimant and other aggrieved employees' total wages, not including overtime premium pay, by the Claimant and other aggrieved employees' total hours worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014. Accordingly, Employer violated Labor Code Sections 226, 226.3, 1174, and 1174.5.

During the PAGA Period, Employer failed to permit Claimant and other aggrieved employees to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, for the reasons specified in subdivision (a) of Section 246.5. Accordingly, Employer violated Labor Code Sections 233 and 234.

During the PAGA Period, Employer failed to provide to Claimant and other aggrieved employees accrual of vacation wages and failed to pay to Claimant and other aggrieved employees vested vacation wages. Accordingly, Employer violated Labor Code Section 227.3.

During the PAGA Period, as a result of, and in addition to, the foregoing Labor Code violations, Employer secretly paid Claimant and aggrieved employees less than the statutory or contractual rate. Accordingly, Employer violated Labor Code Sections 221, 223, and 234.

During the PAGA Period, Employer also failed to provide suitable seating to Claimant and other aggrieved employees during working hours and when the nature of their work reasonably permitted the use of seats. As such, Employer violated Labor Code Sections 1198 and 1199 and the applicable IWC Wage Orders.

As a result of, and in addition to, the Labor Code violations, Employer failed to provide accurate itemized wage statements that accurately reported, among other things, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. As a result, Employer violated Labor Code Sections 226 and 226.3. Similarly, Employer failed to maintain accurate and complete records showing the hours worked daily by and the wages paid to Claimant and aggrieved employees due to the violations described above. Accordingly, Employer violated Labor Code Sections 1174 and 1174.5.

Every employer violates Labor Code Section 1199 if it: (a) requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. As a result of, and in addition to, the foregoing Labor Code violations, Employer has violated Labor Code Section 1199 and the applicable IWC Wage Order.

As a result of, and in addition to, the foregoing Labor Code violations, Employer failed to timely pay all wages owed throughout Claimant and other aggrieved employees' employment and following the end of their employment. Accordingly, Employer violated Labor Code Sections 201-204, and 210.

Since Employer's conduct giving rise to the violations described herein was/is malicious, fraudulent, and/or oppressive, Employer is subject to increased penalties under Labor Code § 2699(f)(2)(B)(ii) and, per Labor Code §§ 2699(g)(3) and 2699(h)(3), is not eligible for reduced penalties under either § 2699(g) or § 2699(h), for remedying violations either prior to or after Employer's receipt of this notice.

Based on these violations, Claimant will seek attorneys' fees, costs, and penalties under the Labor Code individually and on behalf of all other aggrieved employees who were employed by Employer during the PAGA Period. Please advise if the Labor and Workforce Development Agency has any objection to Claimant alleging PAGA claims in a lawsuit against Employer. Should you have any questions, comments, or concerns, please do not hesitate to contact the undersigned.

Sincerely,

TORUS LLP

A handwritten signature in blue ink, appearing to be 'David Alami', written over a horizontal line.

David Alami, Esq.

Cc: Daniel J. Hyun, Esq.