

October 6, 2022

Via LWDA Website:

Labor and Workforce Development Agency Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail:

Panda Express, Inc.
1683 Walnut Grove Ave.
Rosemead, CA 91770
Certified Mail Receipt:

Via Certified Mail

Agent for Service of Process for
Panda Express, Inc.
Monte Baier
1683 Walnut Grove Ave
Rosemead, CA 91770
Certified Mail Receipt:

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Yaritza Martinez, individually and on behalf of all others similarly situated, gives notice of her intent to commence a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice electronically to the Labor and Workforce Development Agency, and by certified mail to Defendant Panda Express, Inc., a California Corporation; and DOES 1-10 (“Defendants”)¹ via certified mail.

Plaintiff was employed by Defendants as an hourly, non-exempt employee. Plaintiff began her employment with Defendants in 2015 and continued such employment through October 2021. She worked as an Assistant Manager.

The group of aggrieved employees that Plaintiff seeks to represent is a group of non-exempt employees working with Defendants during the relevant time period. (“Aggrieved Employees”) This notice is timely as it is provided within one year of the violations.

¹ Plaintiff does not know the true names and capacities, whether individual, partner or corporate, of DOES 1-10, inclusive, and for that reason, said DOES are designated under such fictitious names. Plaintiff will amend this notice when the true names and capacities are known. Plaintiff is informed and believes each DOE was responsible in some way for the matters alleged herein and proximately caused him and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Plaintiff has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees working for Defendants regardless of their classification, job title, or whether they were hired directly or through a labor contractor or staffing agency.

Failure to Pay Minimum Wages, Including Overtime

Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1198 and the IWC Wage Order by failing to pay all wages owed including overtime and minimum wages. The Wage Orders 5-2001 and 7-2001 and Labor Code sections 1194 and 1197 provide that an employee must be paid at least minimum wage for each hour worked and overtime as applicable. Labor Code section 510 and the Wage Orders provide that employees working for more than eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in a day or more than eight (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice the regular rate of pay.

Plaintiff alleges that she and the aggrieved employees were frequently not paid minimum wages and earned overtime because they were required to work while off the clock before and after shifts, and during purported meal periods. Such time is compensable time. However, in violation of the law, Plaintiff and the aggrieved employees were not paid for such time. In addition, Defendants failed to pay overtime at the proper regular rate because they failed to include all forms of non-discretionary compensation.

Failure to Provide Lawful Meal Periods

Plaintiff and other similarly situated employees regularly worked in excess of five hours a day without being provided a meal period of not less than 30 minutes in which they were relieved of all duties, as required by California Labor Code §§226.7, 512, and Wage Order No. 5-2001 and 7-2001. Plaintiff and Aggrieved Employees were often not provided lawful meal periods in part because Defendants maintained and enforced scheduling practices, staffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before thirty minutes. Defendants also failed to pay the premium pay at one hour's additional wage at the employee's regular rate of compensation mandated by Labor Code §226.7(c) and Wage Order No. 5-2001 and 7-2001, subd. 11(B) for each workday they did not receive a timely uninterrupted meal period. As a result of the violation of California Labor Code §§ 226.7 and 512 and Wage Order 7-2001, Defendants are liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

In addition, due to Defendants chronic understaffing issues, Plaintiff and the Aggrieved Employees would often be required to remain on the premises during meal periods and work

through meal periods due to work demands. Further, Defendants failed to pay premiums at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

Failure to Authorize and Permit Rest Periods

Plaintiff alleges that Defendants failed to authorize and permit rest periods. This failure violated Labor Code § 226.7, 1198, and Section 12(A) of IWC Wage Order 5-2001 and 7-2001 which provides that employers shall authorize and permit employees to take a rest period of net ten (10) minutes for each four (4) hours, or major fraction thereof, worked. This action is further brought under Labor Code § 226.7(b) and Section 12(B) of Wage Order 5 and 7, which provides that if an employer fails to authorize and permit a lawful rest period, the employer shall pay the employee one hour of additional pay at the employee's regular rate of compensation for each workday that a rest period was not authorized and permitted. Plaintiff and the aggrieved employees were systematically not authorized and permitted to take legally compliant net ten (10) minute rest periods for every four hours worked or major fraction thereof, which is a violation of the Labor Code section 226.7, 1198, and IWC Wage Order. Employees were not authorized and permitted to take a net ten-minute rest period as required by law, in part because Defendants maintained and enforced scheduling practices, understaffing practices, and imposed work demands and schedules that frequently required employees to forego their breaks or return before a net ten minutes of rest. To the extent any rest periods were taken they were not compliant because employees were essentially required to remain on duty by Defendants' prohibition of Plaintiff and Aggrieved Employees to leave the premises during rest periods and requirement that employees remain available. Defendants violated the law by failing to compensate Plaintiff and the aggrieved employees with one additional hour of pay at their regular rate of compensation when lawful rest periods were not lawfully provided in violation of Labor Code §§ 226.7 and 512, 1198 and the applicable Industrial Welfare Commission Wage Orders.

Failure to Timely Pay Wages During Employment

Labor Code section 204 requires that all wages are due and payable twice in each calendar month. The wages required by Labor Code §§ 226.7, 510, 1194, and other sections became due and payable to Plaintiff and each aggrieved employee in each month that he or she was not provided with a meal period or rest period or paid minimum wage, straight or overtime wages to which he or she was entitled. Defendants violated Labor Code § 204 by systematically refusing to pay wages due under the Labor Code.

Labor Code section 210(a) provides that "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 201.3, 204, 204b, 204.1, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

Failure to Provide Accurate Itemized Employee Wage Statements

Labor Code section 226(A) reads in pertinent part: “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the pay period and the corresponding number of hours worked at each hourly rate by the employee...”

Defendants have failed to record many of the items delineated in applicable Industrial Wage Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed to include compensation for all minimum wages earned or overtime hours worked, as described herein, was an inaccurate wage statement. In addition, Defendants failed to include all applicable hourly rates in effect during each pay period, including Plaintiff’s and Aggrieved Employees’ hourly and overtime rates of pay. Further, Defendants double counted certain hours listed and premiums.

Failure to Reimburse Necessary Expenses

Labor Code section 2802 requires employers to reimburse employees for necessary expenses incurred. Defendants’ also violated California Labor Code §2802 by failing to reimburse Plaintiff and Aggrieved Employees for necessary expenses in direct relation to work performed. Expenses included, but are not limited to, cell phone usage, and mileage. By way of example, Plaintiff, and upon information and belief the Aggrieved Employees, were required to use their personal vehicles to travel for work related purposes. By way of further example, Plaintiff, and upon information and belief the Aggrieved Employees, were required to purchase mandatory uniform items, including but not limited to shoes, and pay for all laundering of uniforms. Plaintiff and the Aggrieved Employees were not reimbursed for such expenses.

Failure to Keep Accurate Payroll Records

Plaintiff also contends that Defendants failed to keep accurate records as required by Wage Order 5-2001, Wage Order 7-2001, Labor Code 1174, and 1198. The IWC Wage Orders

required in pertinent part: Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be records...(5) Total hours worked in the payroll period and applicable rate of pay..." Labor Code section 1174 also requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by, and the wages paid to, its employees. On information and belief and based thereon, Defendants have knowingly and intentionally failed to comply with Labor Code section 1174, including by implementing the policies and procedures and committing the violations alleged herein, including without limitation, failing to keep records of all hours worked, failing to keep track of all wages earned at the proper rates.

Failure to Timely Pay All Wages Owed Upon Separation of Employment

Defendants have violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Plaintiff and all other similarly situated former employees at the time employment as required under California Labor Code §§ 201 and 202, including meal premium pay and overtime pay. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due, including without limitation vacation, immediately upon discharge or within seventy-two (72) hours of voluntary separation of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. Therefore, Defendants have violated California Labor Code §§201, 202, and 203, and Defendants are liable for civil penalties pursuant to Labor Code §§2698 *et seq.*

Failure to Pay Sick Pay at the Proper Rate

In addition to the violation specified above and in the attached Complaint, Plaintiff alleges that Defendant failed to pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate. Labor Code 246(i) provides: An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified. Labor Code section 246(1) provides: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick leave for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." In this case, Plaintiff alleges that Defendant failed to pay sick leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses, shift differentials, and other wages into account in calculating the regular rate. This constitutes a violation of Labor Code.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Very Truly Yours,

/s/ Christina M. Lucio

Christina M. Lucio, Esq.