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December 20, 2023

SENT VIA ONLINE SUBMISSION

California Department of Industrial Relations
Labor and Workforce Development Agency
Attention: PAGA Administrator

SENT VIA EMAIL & CERTIFIED U.S. MAIL

Custom Hardscapes, Inc.
Attention: Michele Bandinu, CEO (admin@custom-hardscapes.com)
2478 Roblar Avenue
Los Olivos, California 93441

Gregory Clark (Agent for Service)
650 Alamo Pintado Road, Suite 301
Solvang, California 93463

RE: ***Kelsea McFerrin v. Custom Hardscapes, Inc.***
PAGA Notice to LWDA

California Labor & Workforce Development Agency:

Colby Law Firm, PC represents aggrieved former employee Kelsea McFerrin ("Plaintiff") in connection with Plaintiff's claims pursuant to the California Labor Code against Custom Hardscapes, Inc. ("Defendant").

This letter is written notice to the California Labor & Workforce Development Agency ("LWDA") as required by the California Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 et seq. ("PAGA"), including, without limitation, California Labor Code §§ 2699(a), 2699(g)(1), and 2699.3(a) and (c), and/or any other applicable provision of statute, rule, or law ("Notice").

Plaintiff worked for Defendant as a non-exempt employee. Because of the allegations set forth herein, Defendant has violated numerous provisions of the California Labor Code.



This Notice is the representative (the Colby Law Firm) of the aggrieved employee (Plaintiff) giving written notice by online filing with the LWDA and by certified mail to the employer (Defendant) of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation, pursuant to California Labor Code §§ 2699.3(a)(1)(A) and/or (c)(1)(A).

This Notice is intended to exhaust the pre-litigation requirements set forth under PAGA. It is the intention of Colby Law Firm, PC to bring the appropriate claims under PAGA should the LWDA not address these matters within the proscribed time under California Labor Code §§ 2699.3(a)(2) and (c)(2).

This Notice is subject to and without waiver of the rights and remedies of Plaintiff and Aggrieved Employees, and is not an express statement of all facts and circumstances concerning this Matter.

A. Submission of Notice

This Notice is submitted online to the LWDA, with a copy sent by certified mail to Defendant. Accompanying this Notice is the \$75 filing fee to the LWDA, pursuant to California Labor Code §§ 2699.3(a)(1)(B) and/or (c)(1)(B). Please advise Colby Law Firm immediately if the fee was not received so that it may be resent.

B. Notice To Company On Behalf Of Aggrieved Employees

This Notice is hereby given to and is made against Custom Hardscapes, Inc. and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of these alleged violations as to any locations or employees who worked at any time in the State of California ("Defendant").

This Notice is made on behalf of all persons who are, were, or will be employees of Defendant or any related or alter ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter and at any location within the State of California ("Aggrieved Employees.")

C. Alleged Violations Of The California Labor Code With Facts And Theories In Support

The alleged violations of the California Labor Code and the facts and theories to support each are as follows.



1. Facts And Theories

Plaintiff, through their representative, intends to pursue civil penalties under PAGA against Defendant, on behalf of themselves and all Aggrieved Employees, based on the factual allegations and theories below.¹

Plaintiff is informed and believes that the Aggrieved Employees experienced the same factual allegations as Plaintiff experienced, and that these factual allegations continue through the present.

Defendant. Defendant Custom Hardscapes, Inc. operates a hardscaping business at 1130 Mission Drive, Suite 102, Solvang, California 93463² (the “worksite”).

Plaintiff’s Hire. On or about April 17, 2023, Plaintiff, a [REDACTED], started working at Custom Architectural Stone as an Administrator until July 2023, when Defendant transferred her into their employ as a Financial Analyst.

Plaintiff’s Job Details. Plaintiff’s job duties included categorizing expenses, calculating overhead, tracking employee hours, and generating financial reports.

Plaintiff’s work schedule was typically Monday through Friday 8am to 4pm or later, and often afterhours.

Plaintiff reported to CEO Michele Bandinu and Office Manager Kathy Collision.

Defendant classified Plaintiff as a “non-exempt” employee paid \$29 per hour.

Plaintiff was one four or five females of the nearly 60 employees of Defendant.

On December 5, 2023, Defendant fired Plaintiff.

Off-The-Clock Work. Defendant failed to pay Plaintiff for all time worked. The off-the-clock work included, among other things according to proof: working during breaks, such as carrying on with work during a meal break; reviewing or responding to emails or texts from a mobile device or after hours; illegally “rounding” employee time at the beginning and/or end of the shift and/or the beginning and/or end of meal breaks; and/pr work performed remotely or away from the work site where there is no time clock system.

¹ See *Huff v. Securitas Security Services, USA, Inc.*, 23 Cal.App.5th 745 (2018) (PAGA plaintiffs who may have suffered just one alleged Labor Code violation are allowed to pursue penalties for any number of additional alleged Labor Code violations that affected other employees and not the plaintiff).

² <https://www.facebook.com/people/Custom-Hardscapes-Inc/100066264172405/>



Overtime Work. Defendant failed to pay Plaintiff for work in excess of eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two (2) times the regular rate of pay.

Meal Break Violations. Defendant failed to provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Defendant automatically deducted unpaid meal break time from Plaintiff's time worked even though Plaintiff performed work during such time; Defendant rounded Plaintiff's clock in and out times for the start and end of meal breaks; Plaintiff's meal breaks were not timely; Plaintiff's meal breaks were interrupted; Plaintiff's meal breaks were less than the full 30 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during meal breaks.

Rest Break Violations. Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof. For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; Plaintiff's rest breaks were less than the full 10 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during rest breaks.

Wage Statements. Defendant knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

Final Pay. Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: minimum wages; overtime wages; meal and rest period premium wages; and/or all wages owed for the final day of work.

2. Violations Of The California Labor Code

Plaintiff, through their representative, intends to pursue civil penalties under PAGA against Defendant, on behalf of themselves and all Aggrieved Employees, for violations of the below provisions of the California Labor Code, based on the facts and theories set forth above:

1. Labor Code §§ 201, 201.5, 202, 203. Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.



2. Labor Code § 204. Failure to pay all earned wages within the time prescribed in Labor Code §§ 204(a) and 204(b).
3. Labor Code § 206. Failure to pay all undisputedly owed wages.
4. Labor Code § 210. Failure to pay wages as required by Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 227.3, and/or 1197.5.
5. Labor Code § 212. Failure to include the name and address of established place of business in the state on pay checks to cash or deposit pay checks.
6. Labor Code § 213. Unauthorized payment of final wages via direct deposit.
7. Labor Code § 221. Failure to not collect and receive owed wages.
8. Labor Code § 226. Failure to provide timely and accurate wage statements.³
9. Labor Code § 226.3. Failure to comply with Labor Code § 226(a).
10. Labor Code § 226.7. Failure to provide rest periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the rest periods.
11. Labor Code §§ 226.7 and 512. Failure to provide meal periods and failure to provide an additional hour of pay at the regular rate of compensation in lieu of the meal periods.
12. Labor Code § 256. Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
13. Labor Code §§ 510 and 1194. Failure to pay overtime and double time compensation.
14. Labor Code §§ 510, 1194, 1194.2, and 1197. Failure to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
15. Labor Code § 558. Violation of a section of the chapter of the Labor Code starting with Labor Code § 500, *et seq.*, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.
16. Labor Code § 558.1. Violation any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, and violating Labor Code §§ 203, 226, 226.7, 1193.1, and/or 1194.
17. Labor Code § 1174. Failure to maintain compliant employee and payroll records.
18. Labor Code § 1197.1. Failure to pay minimum wage.
19. Labor Code § 1199. Violation of an order of the Industrial Welfare Commission.
20. Labor Code § 1198. Violation of the following sections of orders of the Industrial Welfare Commission for conditions of labor prohibited by such:
 - a. Wage Order 1-2001 (or other applicable Wage Order), Section 3, requiring an employer to pay overtime and double time compensation.
 - b. Wage Order 1-2001 (or other applicable Wage Order), Section 4, requiring an employer to pay minimum wages, including overtime and double time compensation at the minimum wage rate.
 - c. Wage Order 1-2001 (or other applicable Wage Order), Section 7, requiring an employer to maintain accurate information with respect to each employee; provide employees with thorough and accurate itemized wage statements; and, provide clocks within a reasonable distance from employees' work areas.

³ *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127 (9th Cir. 2021) (awarding nearly \$4.4 million in statutory Labor Code § 226 penalties and an additional \$5 million in PAGA civil penalties for Labor Code § 226 violations).



- d. Wage Order 1-2001 (or other applicable Wage Order), Section 11, requiring an employer to provide its employees with adequate meal periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.
- e. Wage Order 1-2001 (or other applicable Wage Order), Section 12, requiring an employer to provide its employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.

This Notice shall apply without limitation to any past, present, future, or continuing violation of the California Labor Code or regulations thereunder which might be discovered as a result of reasonable and diligent investigation made pursuant to this Notice.

D. Conclusion

Colby Law Firm, PC believes that this Notice, including any enclosures, provides sufficient facts and theories to support each of the alleged violations. However, if any additional facts or theories to support the allegations in this Notice are required per law, please do not hesitate to contact Colby Law Firm, PC.

Please advise if the LWDA will proceed with an investigation of the allegations raised in this Notice, or if Plaintiff, through their representative, may proceed with private litigation against Defendant on behalf of Aggrieved Employees for the alleged violations in this Notice.

All legal, contractual, and equitable rights are expressly reserved and not waived.

Very truly yours,



Aaron Colby, Esq.

