

SOUTHERN CALIFORNIA OFFICE
.....
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

LODI OFFICE
.....
118 W. OAK STREET
LODI, CA 95240

MAILING ADDRESS:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY
A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

TELEPHONE: (209) 477-3833
FACSIMILE: (209) 473-4818
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

February 22, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/295>

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Sprouts Farmers Market
5455 E High Street
Phoenix, AZ 85054-5464

Re: Manuel Fumero – SSN: xxx-xx-7439; EEID 60213643

This office has been retained by Manuel Fumero in connection with claims arising out of his current employment as an assistant manager for Sprouts Farmers Market, SF Markets, LLC and/or their affiliates (“Employers” or “Sprouts”). Fumero was initially hired by Employers in December 2021 and has remained employed as an assistant manager since that time. Although Fumero’s responsibilities have always required him to devote a substantial amount of time to non-exempt tasks (stocking shelves, receiving and unloading deliveries, covering the register/customer service), Sprouts has misclassified him as an exempt employee through the duration of his employment. At no time did Fumero qualify for any exemption under California law. See *Heyen v. Safeway, Inc.* (2013) 216 Cal.App.4th 795. Despite full knowledge of the volume of non-exempt tasks Fumero has always been required to perform, Sprouts has always improperly classified Fumero as an exempt employee. In accordance with California Labor Code section 2699.3, this letter shall serve as Fumero’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Sprouts regarding the numerous violations of the California Labor Code committed against Fumero and Sprouts’ other current and/or former California workers, and the facts and circumstances relating thereto.

Sprouts has, within the last year and beyond, as to Fumero and other current and former employees within California, done the following:

1. Pay Wages for All Hours Worked/Pay Minimum Wage for All Hours Worked – California Labor Code section 1194 and paragraph 4 of the applicable Industrial Welfare Commission Wage Order (16-2001) mandate that employees be paid at least minimum wage for all hours worked. Despite such mandate, and because Fumero has been misclassified as an exempt employee, Sprouts regularly failed to pay him *any* wage for some of the hours worked—multiple hours worked went wholly uncompensated because Fumero was salaried

and his salary covered only forty (40) hours per week. Cal. Labor Code § 515(d)(2). Throughout his employment, Fumero routinely worked 10-12 hour shifts yet was never paid any overtime premiums amounts, or any amounts at all, for hours beyond eight (8) in a workweek. Fumero is informed and believes that Employers similarly failed and refused, and continues to fail and refuse, to pay other employees for all hours worked.

2. Pay Overtime Wages – California Labor Code section 510 requires employers to compensate employees at a rate at least 1 ½ times the regular rate of pay for all hours worked beyond eight (8) in a workday and forty (40) in a workweek, and at least twice the regular rate of pay for all hours worked beyond twelve (12) in a workday and beyond eight (8) on the seventh day of the workweek. At no point was Fumero paid an overtime premium wage, despite the fact he regularly worked more than eight (8) hours in a workday and more than forty (40) hours in a workweek. Fumero is informed and believes that Employers similarly know (and expect) other misclassified employees to work more than eight (8) hours in a workday and/or forty (40) hours in a workweek, is aware more than 50% of their time is being spent on non-exempt/non-managerial work, but does not compensate any of those individuals with overtime premium wages, instead only paying “salary.”

Fumero is also entitled and earns wages beyond salary. These include, but are not limited to store bonuses. Sprouts has never included those amounts in the “regular rate of pay” for purposes of calculating the overtime/doubletime rate. Other employees, are subjected to the same regular rate miscalculations.

3. Provide Meal Periods – An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. Similarly, an employer may not employ an employee for more than 10 hours per day without providing the employee with a second meal period. Due to his responsibilities and the volume of non-exempt work he was expected to perform, Fumero was regularly denied the opportunity to take a lunch period. On occasions when he was afforded the opportunity to take a lunch, it was frequently not until after completion of his 5th hour of work. He was never afforded a meal period premium for any meal period denied. Fumero believes other California employees have been similarly treated.

4. Provide Rest Periods – For the same reasons set forth above with respect to meal periods, Fumero and Sprouts’ other employees were often unable to take their rest breaks. Sprouts failed to provide the requisite additional compensation required by Labor Code section 226.7 to Fumero and its other employees when these rest breaks were denied.

5. Furnish Accurate Itemized Wage Statements – Because of the violations set forth above, the wage statements furnished by Sprouts violated Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned as required by section 226(a)(1);

Since Employers did not compensate Fumero for all work performed, or compensate him for overtime work performed, the wage statements issued, necessarily failed to accurately identify gross wages earned

- b. Total hours worked by the employee as required by section 226(a)(2);
Because Employers did not track Fumero's actual hours worked during the time he was misclassified as exempt, his hours worked were never accurately reflected on his wage statements.
- c. The net wages earned in violation of section 226(a)(5); and
Because of the myriad failures to properly pay wages, including the failure to provide meal and rest period premiums and/or compensate them at the correct regular rate, the wage statements furnished to Fumero and other employees necessarily failed to accurately identify net wages earned.
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).
Since Sprouts did not pay Fumero for all hours worked, both overtime and regular, the wage statements did not accurately reflect the number of hours worked at each rate—they did not reflect hourly rates at all as Fumero was misclassified as exempt.

6. Timely Pay Wages – Because Employers failed to properly pay overtime, minimum wages, and meal/rest period premiums when they became due, they necessarily violated the provisions of Labor Code section 204.

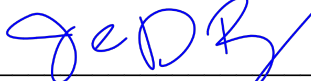
7. Pay All Wages on Separation – Because Employers failed, and continue to fail, to properly pay its employees for all hours worked and fails to pay them overtime premiums for hours worked beyond eight (8) in a workday and/or forty (40) in a workweek, and fails to compensate for meal/rest periods denied there are necessarily wages that remained outstanding at the time and other California employees separate from employment with Sprouts that are not timely paid at the end of their employment.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client. If the LWDA does not intend to investigate these violations, Fumero intends to file a civil complaint against Sprouts pursuant to the Labor Code Private Attorney General Act of 2004 (Labor Code §§ 2698 – 2699.5), on behalf of herself and, as a proxy for the LWDA, to impose civil penalties arising out of violations of the Labor Code as to Fumero and Sprouts' other current and former California employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


JENNY D. BAYSINGER