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March 24, 2023

Via E-filing:
California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:
Labar Golf Renovations, LLC
170 Mount Airy Road, Suite A1
Basking Ridge, NJ 07920

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Justino Chavez
Employers: Labar Golf Renovations, LLC

Dear Sir or Madam:

Claimant Justino Chavez has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM and Sahag Majarian, II, and Garen Majarian of MAJARIAN LAW GROUP, APC, for wage and hour claims against his former employer Labar Golf Renovations, LLC ("Employer"). Mr. Chavez began working for Employer as a Laborer making $16/hour assisting in the construction and renovation of golf courses. His employment ended on March 30, 2022.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq*. We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay Wages, including Overtime Wages

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.,* Wage Orders)

The Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so." When employees like Claimant and his coworkers earning wages at or near minimum wage do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including shaving time from their timecards due to employer rounding.

Pre and Post Shift Work and Time-Shaving/Rounding

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. Employees work 10-12 hour days outside, and Employer rounds timecard entries to ensure that employees are not paid for all hours worked, and frequently requires employees to engage in required work tasks before clocking in and after clocking out.

When it comes to time shaving and rounding, the California Supreme Court has rejected the de minimis argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees' hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Overtime at Lawful Rate

Employer pays overtime after employees have worked 40 hours in one week. However, California law requires that employees also be paid overtime after 8 hours in a day. Employer also failed to pay employees double-time at the lawful rate when it required employees to work excessively long shifts. As a result of these practices, Employers have violated Cal. Labor Code §§218, 510, 1194, 1197, 1198 and Industrial

Welfare Commission Wage Orders paragraph(3)(A)(1) for failure to pay overtime. Employers are liable for civil penalties pursuant to Cal. Labor Code §558and 2698 *et seq.*

Failure to Provide Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Orders)

Labor Code §512 provides, "[a]n 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…" Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal… period mandated by an applicable order of the Industrial Welfare Commission." The Wage Order provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

In this case, Claimant claims that although he frequently worked 10-12 hour shifts, he was never provided with a second meal period. Additionally, Claimant and his coworkers received late meal periods. Generally, Employer would require employees to combine their meal and rest periods so that they would take approximately 1 hour of unpaid time and zero rest breaks. However, even these late meal breaks were often interrupted.

The Wage Order requires employers to authorize and permit employees to take an uninterrupted 30 minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, "the employment of any employee… under conditions of labor prohibited by the order is unlawful." Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Although meals were routinely late and noncompliant, Employer never paid penalty pay to Claimant, as indicated on his paystubs. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

<u>Failure to Provide Rest Periods, Cool-Down Rest Periods, and Safe and Healthful Place of Employment</u>

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.,* 6300, 6310, 6400 *et seq.*, Wage Orders)

Claimant and his fellow employees regularly worked in excess of four hours, or a major fraction thereof, during work days without being provided at least a ten minute rest period in which he was relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. Employees were not able to take any paid breaks and were instead required to take a longer, unpaid meal period.

In addition, even if breaks were given (and they were not), they could not be compliant with California law. Employees, including Claimant, who worked outdoors were not provided with sufficient potable water, bathrooms, or shade- all required under CA law. Labor Code §226.7 requires that employers provide rest periods and cool down rest periods that comply with state laws, including those that require adequate shade, restrooms, and water to employees for use during required break and cool-down rest periods.

<u>Cool-Down Rest Periods</u>

Even on summer days when temperatures in Coachella Valley rose well above one hundred (100) degrees Fahrenheit, Employer discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain "outdoor places of employment" "shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating." Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

<u>Potable Drinking Water</u>

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employee were denied sufficient potable water.

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge."8 CCR § 3457(c) further requires the provision of potable drinking water and single use cups. Claimant and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working outdoors throughout the duration of the shift.

Pursuant to §2441, "Any violation of this section is punishable for each offense by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment." . Pursuant to Cal. Labor Code §6712, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation."

Labor Code 226.7 requires compliant breaks, and employees may recover PAGA penalties for violation of 226.7.

<u>Adequate Shade</u>

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define "shade" as "blockage of direct sunlight." Employer failed to provide Claimant and aggrieved employees, who worked outdoors, with adequate shade.

Labor Code sections 6300, 6310 and 6400, *et seq*. requires all employers to provide a safe and secure workplace. Because Employer did not provide shade required by 8 CCR 3395 at their "outdoor places of employment," Claimant and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods. Damages and PAGA penalties for violation of Labor Code §226.7 are extensive.

<u>Legally Compliant Bathrooms</u>

Bathrooms were ½ mile away and clearly inaccessible at any time except during employees' unpaid meal break. Breaks did not comply with state laws as required by Labor Code §226.7 because workers were not provided with clean bathrooms and sufficient handwashing facilities and Claimant and aggrieved employees had to deal with inadequate bathroom conditions due to Employer's simple failure to provide basic human necessities.

Cal. Code Regs. tit. 8, § 3457 requires that "[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years." Labor Code §6712 requires toilets to be "serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance." Moreover, "any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty…of not less than seven hundred fifty dollars ($750) for each violation." Labor Code §6712.

The public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, *et seq.* requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, Employer failed to do so in failing to provide bathrooms, water, and shade.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on the above paystub. Pursuant to Labor Code §1198, "the employment of any employee… under conditions of labor prohibited by the order is unlawful." Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 et. seq.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.* Wage Orders 13 & 14)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Claimant was terminated on May 30, 2022, but did not receive his final pay until June 3, 2022.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of

Section 203. Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Paystub and Record Keeping Violations

(Cal. Lab. Code §§226, 1174, 2698 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. Wage statements list LGR, LLC, although the legal name of the employer is Labar Golf Renovations, LLC. LGR, LLC is the name of a different LLC that was suspended in 2005 and is based in Gardena, CA, and apparently unrelated to Employer. By failing to state the true legal name, Claimant and aggrieved employees are hindered from knowing the identity of the entity to hold accountable for the various wage and hour violations they experienced.

Additionally, based on and as a result of the above-mentioned Labor Code violations, Employer maintained and issued inaccurate wage statements, failing to include required hours and overtime hours worked and misrepresenting actual regular hours worked on the final wage statement. Employer further failed to include meal and rest period penalties, thus failing the requirements of Labor Code §226(a). Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for himself and other aggrieved employees for each violation. Further, claimant will seek recovery of civil penalties under Labor Code §226.3, and PAGA, Labor Code §2698, *et seq.*, on behalf of the LWDA against the Employers if authorized to file a representative action on behalf of the State of California for Employers' paystub violations.

Conclusion

Employers have violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully Submitted,

Nazo Koulloukian
KOUL LAW FIRM
Attorneys for Claimant

cc: Majarian Law Group, APC