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March 23, 2023

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail and Email:

Oakhurst Industries, Inc.
DBA Freund Baking Co.
2050 S. Tubeway Ave.
City of Commerce, CA 90040

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Luis A. Castro and Luis G. Castro-Martinez
Employer: Oakhurst Industries, Inc. DBA Freund Baking Co.

Dear Sir or Madam:

Luis A. Castro and Luis G. Castro-Martinez (hereafter “Claimants”) have retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent them, and all other aggrieved employees, for wage and hour claims against their employer, Oakhurst Industries, Inc. DBA Freund Baking Co. (hereafter “Employer”).

Luis A. Castro worked for Employer until December 2022, and Luis G. Castro-Martinez worked for Employer until January 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and 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 Comply with California Law Concerning Payment of Lawful Wage For
All Hours Worked, Including Overtime Hours Worked**

(Cal. Labor Code §§200, 207, 218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(H) of Wage Order 1 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 employers require employees who are already paid at or near minimum wage to undergo off the clock, pre-shift temperature checks and change into required work uniforms in employer locker rooms off the clock, the result is that employees are underpaid for each pay period. Employer has violated Labor Code §§510 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Unpaid Wages – Rounding

Employers round Claimants and aggrieved employee timecards to the nearest quarter hour in a manner that favors Employers. Indeed, with Employers’ strict policies against arriving to work late, Claimants and aggrieved employees clock in before their shift start time and this consistently benefitted Employers.

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. 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 Employers is neither fair nor neutral, as it consistently shaved time from Claimants and aggrieved employees’ hours worked, resulting in a failure to compensate Claimants and aggrieved employees for all hours worked.

Off-the-Clock Hours Worked- Temperature Checks, Logs, and Uniforms

Claimants 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. Claimants and aggrieved employees were required to perform several required duties off the clock. Employees were required to first go to the office to have their temperature checked and write it in a log. Then they were required to go to the locker room to change into a specific white uniform provided by the employer. After changing, the employees then go to the timeclock to clock in and start their shifts. The result is at least 5 minutes of pre-shift unpaid time, as well as additional post-shift time because employees

are required to change out of their required uniform in the locker room after clocking out. Employer has violated Labor Code §§510, 1194, 1198, 1199 and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and aggrieved employees 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, Claimants and aggrieved employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order. Employer failed to pay Claimants and aggrieved employees for all hours worked as a result of the practices described above. Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 1199, 2698 *et seq.*)

During Claimants' employment, Employer failed to maintain a compliant meal period policy and practice, failing to provide all its hourly employees with their right to take a timely, off-duty unpaid 30-minute meal period. 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." Wage Order 1 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." Labor Code §1198 makes it unlawful for an

employer to employ an employee for longer hours than those fixed by the wage order or under conditions of labor prohibited by the order.

Claimants and aggrieved employees frequently had their meal breaks late and shortened because of the distance between the break room and the timeclock, employees spent significant unpaid time walking. Employees were also required to sanitize prior to clocking back in from lunch.

Employer failed to permit Claimants 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, 512, and 1198. As a derivative claim, Claimants allege 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.*

Failure to Provide Compliant Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 1198, 2698 et seq.,

8 CCR 3202, Wage Order 9 ¶15.))

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and Wage Order 9.

Claimants and their coworkers did not receive the required 10 minute, uninterrupted breaks because of the distance between the work area and the break room, in addition to the time required to sanitize prior to resuming work after the break was over.

Employer failed to pay Claimants and similarly situated employees all 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 missed and uncompliant rest periods. 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) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203, 1199 and 2698 *et seq.*)

Employer knowingly and willfully failed to pay all compensation due and owing to Claimants and aggrieved employees at the time employment terminated. Because of Employer's unlawful timekeeping practices, Claimants and employees were underpaid and those amounts remained due and owing when they separated from the company.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment within the time periods required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, Claimants and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements and

Maintain Accurate Records

(Cal. Labor Code §§ 226, 1174, 1199 2699 *et seq.*)

California Labor Code § 226(a) provides that "[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees...an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the name of the employee and his or her 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 the pay period and the corresponding number of hours worked at each hourly rate by the employee."

Labor Code § 1174 provides that "[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years."

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees in accordance with Labor Code §§ 226 and 1174. As a result of the unlawful employment practices discussed herein, the statements provided to Claimants and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums and total regular and overtime hours worked.

Such failures caused injury to Claimants 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. Employer's unlawful employment practices were knowing and intentional, and thus Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, penalty pay, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimants respectfully request that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimants request that the agency inform them if it does not intend to investigate these violations so that they may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimants

cc:

Sahag Majarian, II
Garen Majarian
Majarian Law Group, APC