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LOS ANGELES, CA 90010

March 8, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Peach Home Services, LLC
532 Malloy Ct.
Corona, CA 92880

Goettl Air Conditioning and Plumbing
532 Malloy Ct.
Corona, CA 92880

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Francisco Ortiz
Employer: Peach Home Services, LLC and Goettl Air Conditioning and
Plumbing

Dear Sir or Madam:

Francisco Ortiz has retained Nazo Koulloukian, Esq. of Koul Law Firm, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Peach Home Services, LLC and Goettl Air Conditioning and Plumbing (hereafter collectively referred to as “Employer.”)

Employer is an air conditioning and plumbing company where Claimant worked as an HVAC installer from 2021 until 3/23/22, and again from 6/23/22 until 12/6/22.

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 for All Hours Worked,
Including Overtime Hours Worked**

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

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.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently missed meal breaks, as discussed below. Although on some occasions Employer would pay a penalty payment, on other occasions, Employer would modify the time records to automatically insert a meal period when none was taken. Employees were also required to download Paylocity, a timekeeping and HR application, and communicate with Employer during unpaid time. This results in underpaid hours worked, resulting in failure to pay wages, including overtime and minimum wages. Employer has violated Labor Code §§510, 1194, 1194.2, 1197, 1198, 1199 and Wage Order 16. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant 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, 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. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Provide Timely, Uninterrupted Meal Breaks and Second Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1199, 2698 *et seq.*)

During Claimant’s employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all its hourly employees with their right to take all required timely, off-duty, unpaid 30-minute meal periods. 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...An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second 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 16 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.

On many occasions, Claimant and aggrieved employees missed meal periods. Although Employer would occasionally pay a meal period penalty payment, on other occasions Employer would modify employee time records to insert a meal period when none was taken.

Employer failed to assure Claimant and others 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, Claimant alleges that pay statements were inaccurate, failing to include all 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 Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that he and his coworkers frequently missed rest periods due to the press of work.

Uninterrupted rest periods were not consistently provided or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 16-2001 11(A). When breaks were missed Employer failed to pay the 1-hour penalty, as required. Moreover, although Wage Order 16 permits late or skipped breaks, “in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work,” even in those instances, the missed rest period must be made up in that same day or the Employer must compensate the employee for the missed ten (10) minutes of rest time at his regular rate of pay. Because Employer violated the Wage Order, Employer is liable under Labor Code §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 and 2698 *et seq.*)

Pursuant to Cal. Lab. Code § 202 (a), “[i]f 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.” An employee who is discharged must be paid all of his or her wages immediately at the time of termination. Labor Code §§ 201 and 227.3.) As a result of Employer’s unlawful employment practices as described herein, Employer failed to pay aggrieved employees who are no longer employed by Employer all wages due in a timely manner upon termination.

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated. Further knowing that they were not being paid for all hours worked, including meal/rest periods and overtime pay. Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §203, aggrieved employees 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 Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related tasks and communications, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Specifically, Claimant and aggrieved employees were required to download the Paylocity app which is required by Employer to clock in and out. Employees were also required to download the Service Titan app which is used by customers to sign contracts and pay for services. Employees are also required to purchase and maintain their own tools necessary to perform the assigned work. For example, Claimant purchased drills, a vacuum pump, a torch, and electrical testing equipment, costing about \$3,000 in total. Additionally, Claimant was required to use his personal car to travel between locations, sometimes as many as 3-4 locations per day. He was not paid mileage for the use of his vehicle. Accordingly, Employer is liable for civil penalties under PAGA §2699 *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 Claimant 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 Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums and total regular, overtime, and double time hours worked. Additionally, Employer includes sick pay, holiday pay, and vacation wages in the total hours worked, resulting in a facially incorrect wage statement.

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. 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. 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 Claimant if it does not intend to investigate these violations so that Claimant may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal flourish extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant