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April 6, 2023

via CERTIFIED MAIL and ONLINE filing

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Mr. HARLES FRANCO JR
Bakersfield Concrete & Construction
17955 ROSEDALE HWY
BAKERSFIELD, CA 93314

In Re PAGA NOTICE: Rafael Garcia v. Bakersfield Concrete & Construction

Dear PAGA Administrator:

Our firm represents the interests of *Rafael Garcia* (“Plaintiff”), against Bakersfield Concrete & Construction (referred to as the “Defendant”). Plaintiff has worked as a laborer, and leader/manager, \$21/hour until 2/9/2023. His supervisor was Tony Gonzalez.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendant’s employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- 1. Violation of Labor Code § 226.7 (Missed Rest Breaks and cool off period);**
- 2. Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**
- 3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**
- 4. Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
- 5. Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**

- 6. Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
- 7. Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
- 8. Violation of Labor Code § 2802 (Failure to Reimburse Business Expenses);**

During the relevant timeframe, Defendant employed Plaintiff as non-exempt hourly employee. Plaintiff was employed as a laborer to milk cows.

Plaintiff's superior, Tony Gonzalez, was not allowing him to take any rest breaks for full day of work which lasted minimum of 8 hours. Plaintiff was told that Defendant was understaffed and whenever he wanted to take breaks he encountered tasks to do. Therefore he could not take any rest breaks. Plaintiff was hired to work shifts of over four hours, up to over 8 hours a day but was not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiff worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendants' conduct, as alleged herein, violates applicable Wage Order and Labor Code § 226.7, and also California Code of Regulations, Title 8, sections 3395(c) and (d) which provides that no employer shall require any employee to work during any rest period mandated by an applicable order of the IWC and also must allow employees a cool down period when working in outdoor places.

Defendant refused to compensate Plaintiff at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during his employment, Plaintiff did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift he worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take uninterrupted meal breaks every 5 hours.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor account accurately for overtime pay for hours employees work. When Plaintiff worked overtime, he did not get paid the overtime rate for all the hours worked overtime.

Therefore, Plaintiff claims that Defendant did not provide him and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiff with their statutory breaks. Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiff was given wage statements which was inaccurate and Plaintiff was not paid for all his wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that they work in excess of statutory hours per week and do not receive compensation for all the hours work and are not paid accurate overtime.

Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiff claims that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through their attorney of record:

Farrah Mirabel, Esq.
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Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiff, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections **98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5,**

510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5, and 2698-2699, 2699.5 and 2802 and applicable IWC.

Counsel for Defendant has accepted service for this PAGA notice and Plaintiff's counsel is serving defense counsel with this PAGA notice via certified mail.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, please contact us by **May 28, 2023**.

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.