

May 30, 2023

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Via Certified Mail

Finchey Corp of California
800 S. Brand Blvd.
Glendale, CA 91204

Subject: *Khachik Keheyany v. Finchey Corp of California*

Dear Representative:

This office represents Khachik Christopher Keheyany (“Plaintiff”) in connection with Labor Code violation claims related to their employment with Finchey Corp of California (“Employer”). Employer can be contacted at:

Finchey Corp of California
800 S. Brand Blvd.
Glendale, CA 91204

Plaintiff was subjected to at least one of the Labor Code violations alleged in this letter while employed by Employer. As such, Plaintiff intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Employer employed in California and who were subjected to any or all of the Labor Code violations referenced herein during the PAGA Period (“Aggrieved Employees”). The PAGA Period begins one year prior to the date of this letter and, because the violations alleged herein are ongoing, the PAGA Period extends beyond the date of this letter.

This letter is sent pursuant to the requirements of Labor Code section 2699.3. The Labor Code violations being alleged are as follows:

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provides that an employer shall 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, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided.

An employer provides compliant meal breaks to its employees “if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable

opportunity to take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, the Aggrieved Employees were required to remain on call, on-site, and on-duty because they were expected to meet certain sales targets; failure to meet those targets would result in discipline, or being the first on the chopping block when layoffs were necessary. Employer was aware of this, and did nothing to correct their employees perceptions about the nature of their rights under California law; Employer was happy to take advantage of their employees.

Not only must an employer affirmatively relieve its employees of all duty during their meal breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks. (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

Here, Employer impeded or discouraged its employees from taking compliant meal breaks because employees who took breaks would sell less than their non-break-taking colleagues and would therefore be more likely to get fired; moreover, Employer allowed a culture to develop whereby supervisory employees would conclude employees who took their statutorily provided meal breaks were lazier than their counterpart. As such, Plaintiff and the Aggrieved Employees were successfully discouraged from taking breaks.

Civil Penalties Applicable to Meal Break Violations

As a result of the above meal break violations, Employer is subject to the civil penalties listed in Labor Code sections 558 and 2699.

Rest Break Violations

Labor Code section 226.7 and the applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided.

The Aggrieved Employees were required to remain on call and generally on duty during their rest breaks. Courts have repeatedly held that employers may not impose any limits on rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 269 (2016) (an employer cannot “satisfy its obligation to relieve employees from duties and employer control during rest periods when the employer [] requires its employees to remain on call”)). Thus, Employer violated the Labor Code by requiring the Aggrieved Employees to remain on call and on duty during their rest breaks.

An employer generally may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the California Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises during their rest breaks, they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks.

Civil Penalties Applicable to Rest Break Violations

As a result of the above rest break violations, Employer is subject to the civil penalties listed in Labor Code section 2699.

Wage Statement Violations

Labor Code section 226 requires an employer to provide wage statements to its employees which include, among other things, gross and net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Employer failed to provide wage statements which accurately reflected this information.

Civil Penalties Applicable to Wage Statement Violations

As a result of the wage statement violations detailed above, Employer is subject to the civil penalties listed in Labor Code sections 226.3 and 2699.

Waiting Time Penalties

Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation. When an employer fails to comply with the above, the employee is

entitled to the equivalent of a day's wage at their regular rate of pay for each day the employer is late, for up to 30 days. (Labor Code section 203).

Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiff becomes aware of additional facts or theories of liability, they expressly reserve the right to revise these facts and/or add any new claims by amending and/or supplementing this letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Sincerely,

/s/

Joseph Gross