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May 17, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Kindeva Drug Delivery, L.P.
11200 Hudson Road
Woodbury, MN 55129

Kindeva Drug Delivery, L.P.
10 East 53rd Street, 31st Floor
New York, NY 10022

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Marvin Kinney
Employers: Kindeva Drug Delivery, L.P.

Dear Sir or Madam:

Claimant Marvin Kinney has retained Nazo Koulloukian, Esq. and the KOUL LAW FIRM for wage and hour claims against his employer Kindva Drug Delivery, L.P. (hereafter “Employer”). Claimant began working for Employer in April of 2022 and remains a current hourly, non-exempt employee.

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 Order 1)

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 employees like Claimant and his coworkers do not receive payment for all hours worked, the result is that they are earning less than the statutory minimum wages for time spent off the clock and all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period.

Off-the-Clock Hours Worked

Employer requires its hourly employees to go through various levels of security where they are required to use a personalized badge to enter through gates, buildings, and other entryways and secured offices, all prior to clocking in. Once employees finally reach the primary timeclock in the main office, and because Claimant and dozens of other aggrieved employees would come on shift at the same time, they would face long lines and delays to clock in. Some employees would choose to wait in line at the primary time clock, while others would choose to leave the main office, badge in and out and enter through another part of the building to reach a different time clock. There was always a lot of stress and pressure around clock-in times because employees were not permitted to clock in any earlier than 3 minutes prior to their shift start time, but would be in trouble if they clocked in one minute late. Employees were also required to go through various levels of security to enter and walk to the timeclock when returning from unpaid lunch periods which further contributed to unpaid hours worked. Employees would also arrive at work early to confirm that they were able to secure scrubs provided and cleaned by Employer in their size.

When employees earning minimum wage do not receive payment for all hours worked, including off-the-clock and overtime hours worked, the result is that they are earning less than the statutory minimum wages for all hours worked, in violation of Labor Code §1197.

Failure to Pay All Wages Owed Twice Per Month

Employer is 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 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 Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, 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 the Wage Order. Additionally, employees receive zero pay for time spent working off the clock which is also a violation of the labor code. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks

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

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." Paragraph 11 of 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 and his coworkers frequently experienced noncompliant meal periods that were under 30 minutes in length because of the extensive walk and wait time associated with the clock in procedure described above. The break area was in an entirely different building than Claimant's work area resulting in lengthy walk time. Additionally, the timeclocks were programmed to prohibit employees from clocking back in less than 30 minutes after their clock out time, but employees would also get in trouble if they clocked in even one minute late. The result is that employees would return to the timeclock before the 30 minutes were up and wait (off the clock and unpaid) to clock in to ensure they clocked in at the exact time as directed, taking into account the fact that there may be lines. Employees would also sometimes be paged while on meal periods and many employees felt pressure to respond, interrupting their meal periods.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer did not account for all hours worked that were unaccounted for on their timecard and further because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy.

The Wage Orders require 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. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. 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, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks and Potable Water

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712)

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 the Wage Order. Claimant explains that he and his coworkers frequently experienced noncompliant rest periods because of time spent walking from the work area to the break area, the inadequate seating and space provided for employees in the break area, and the insufficient water made available to employees.

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 for numerous reasons, including because employees 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 potable water within reasonable proximity to their workplace. The only place they could access water was near the locker rooms, a significant walk from the work area.

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 often, however no rest period penalty pay is listed on any paystubs. 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, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time their employment terminated. 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.

Additionally, 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.

Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Safe Working Conditions

(Cal. Labor Code §1198, Wage Order)

Employer's workplaces would get unsafely hot due to Employer's lack of adequate climate control facilities.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Claimant explains that it would often get unbearably hot in the facility, sometimes to the point where cardboard boxes started to soften given the indoor heat and humidity. In addition to climate control issues, Employer failed to take safety measures required to keep employees safe during COVID-19. Labor Code 1198 makes it unlawful to employ employee in conditions prohibited by the wage order. By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer failed to timely make changes to the workplace at the onset of COVID. Under LC §6409.6(a)(1). “COVID-19” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The Employees continued to work without distancing throughout the pandemic. Claimant and aggrieved employees continued to work in enclosed and improperly socially distanced work environments without any distancing from others throughout the pandemic. There was no enforced written covid prevention program enforced and employees were not consistently advised when a close contact at work had Covid.

Employers employed their employees under other unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code. For instance, Claimant observed that signs noting the location of fire extinguishers were missing and the fire extinguishers themselves were blocked by ladders and other objects. He also observed pallets in walkways throughout the warehouse blocking aiseways and creating risk of injury.

As a result of these practices, Employers have violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for their Employees, as outlined above. Employers are liable for civil penalties pursuant to Cal. Labor Code §2699 *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 discharge of duties. Here, Claimant and aggrieved employees were required to purchase many items for work purposes for which they were never fully reimbursed, including slip-resistant shoes, flashlights, and safety goggles. Regarding the shoes, employees were required to purchase a particular shoe which cost about \$120 but they were only provided with a \$100 voucher. The flashlights provided to employees were inadequate and inoperable making it such that employees could not effectively do their jobs without a operational flashlight, necessitating that Claimant and aggrieved employees purchase their own adequate flashlights. The goggles were similarly inadequate and would get fogged up in Employer's prohibitively hot work environment, again rendering it impossible to effectively complete their work and leading Claimant and aggrieved employees to purchase sufficient goggles that would not fog and impair their vision. Employer was required to provide these items to employees, or reimburse employees when employees were required to provide them for themselves, but never did.

Claimant and aggrieved employees were also required to use their cell phones at work. Personal cell phone numbers were associated with the dual-factor authentication required for employees to log into their email, master control system, or training and quiz system and employees were required to access and use their personal phones in order to access these required work systems. Employees were also required to download the Dayforce app which provided access to information concerning their employment. Employer's failure to reimburse for any of these expenses renders employer liable for PAGA penalties for each pay period wherein a violation occurred.

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 Claimant and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. Wage statements issued to employees do not state the true legal address of the entity that is the employer. Wage statements list an address in Woodbury MN, while the California Secretary of State lists the legal address as in New York, NY. Wage statements also include sick pay, vacation wages, and penalty wages in the total hours worked, leading to an incorrect statement of hours worked.

Additionally, based on and as a result of the above-mentioned Labor Code violations, Employers 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, and accurate itemized business expenses, thus failing the requirements of Labor Code §226(a). Employer also failed to list required sick pay. 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, penalties, and reimbursements to which they are and were entitled.

Claimant will seek penalties as permitted under Labor Code §226 for herself 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