



May 12, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Tammy Kaatz & Sugey Cornejo v. Bluestar Resort & Golf, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Tammy Kaatz and Sugey Cornejo in claims arising from their respective employments with Bluestar Resort & Golf, LLC; and DOES 1 through 100 (collectively “BRG”). Ms. Kaatz and Ms. Cornejo are “aggrieved employees” as defined by Labor Code Section 2698 *et seq.*, due to BRG’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

BRG is a lifestyle resort company employing non-exempt employees in the State of California at the numerous locations that it operates. Ms. Cornejo worked for BRG as a non-exempt employee in the position of personal trainer/fitness instructor from approximately April 2017 until approximately June 2022. Ms. Kaatz worked for BRG as a non-exempt employee in the position of personal trainer/fitness instructor from approximately February 2020 through approximately June 2022. Ms. Kaatz and Ms. Cornejo’s primary job duties revolved around leading and creating various physical fitness classes and personal training sessions for the benefit of BRG.

For purposes of this letter, the “aggrieved employees” whom Ms. Kaatz and Ms. Cornejo seeks to represent are the other aggrieved employees of BRG in California at any time during the one year preceding the date of this letter through the present.

Ms. Kaatz and Ms. Cornejo were made to operate under separate compensation structures, being paid minimum wage for administrative work that they performed at the commencement of their shift and being paid approximately \$35 per hour for the rest of their shifts while they were leading classes or engaged in personal training sessions. BRG required Ms. Kaatz and Ms. Cornejo to clock in and out under these separate pay codes throughout the day, however were not compensated for the time spent between clocking in and out causing Ms. Kaatz and Ms. Cornejo to be deprived of all minimum and overtime wages. Specifically, after clocking in at the beginning of their shifts and performing their

administrative duties, Ms. Kaatz and Ms. Cornejo would clock back out, have to wait anywhere from 2-4 minutes off-the-clock, and then clock back in under their normal payrate of \$35 per hour. This time spent off-the-clock was inherently compensable as they were on duty and waiting for their time to be captured in between clocking in and out, but Ms. Kaatz and Ms. Cornejo were not ever compensated for this time in any fashion. Consequently, due BRG's unlawful timekeeping and payment policies and practices that failed to properly compensate for all hours worked, including overtime hours worked, Ms. Kaatz, Ms. Cornejo, and the other aggrieved employees have been deprived of all required minimum and overtime wages earned.

Furthermore, on those occasions where Ms. Kaatz and Ms. Cornejo worked overtime hours during the week, Ms. Kaatz and Ms. Cornejo were rarely, if ever, compensated at the proper requisite overtime rate of pay. Specifically, as mentioned above, Ms. Kaatz and Ms. Cornejo were compensated at multiple hourly rates of pay (in addition to other nondiscretionary forms of compensation) which are not excludable from the regular rate of pay. Upon information and belief, BSR's failures to pay all due overtime wages is in part due to BSR's failure to properly blend all hourly rates in a given pay period, amongst other nondiscretionary forms of compensation, to determine the proper regular rate of pay for calculating overtime, resulting in substantial unpaid overtime compensation. Further, BSR As a result, BRG failed to ensure that Ms. Kaatz, Ms. Cornejo, and other aggrieved employees received proper overtime wages for all overtime hours worked, in compliance with Wage Order 2.

Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were not authorized to exercise all legally required rest periods. Rather, Ms. Kaatz and Ms. Cornejo would generally be on-the-clock and working throughout the entirety of their shifts in order to meet the intense demands placed upon them by BSR. Furthermore, even if BSR ever authorized or provided Ms. Kaatz and Ms. Cornejo with anything resembling a rest period, they were inherently on-duty and non-compliant as they were not permitted to leave BSR's facilities and would be badgered with work-related questions and concerns throughout the entirety of their shifts. As a consequence, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were systematically denied paid rest period compensation that they were duly and legally entitled to. Despite BRG's failure to authorize and permit Ms. Kaatz, Ms. Cornejo, and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, BRG never provided Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the time period in question, BRG maintained no payroll code or another mechanism for the payment of rest period premiums in the event Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were not authorized to take lawful rest periods.

BRG also failed to provide Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with a compliant first meal period when they worked shifts in excess of 6.0 hours. Ms. Kaatz, Ms. Cornejo, and other aggrieved employees rarely, if ever, were entitled to exercise the use of timely, duty-free, legally compliant a thirty-minute

uninterrupted meal period despite almost always working at least 6.0 hours in a day. Rather, despite countless complaints regarding BSR's failures to provide all requisite meal periods, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees would generally work through their shifts without taking any time for a compliant meal period. Furthermore, to the extent that Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were ever afforded anything resembling a meal period, they were always on-duty and non-compliant. Instead, on those rare occasions where Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were actually permitted to exercise the use of meal periods, they would be confined to BSR's facilities and constantly interrupted by coworkers and supervisors. Indeed, Ms. Kaatz and Ms. Cornejo, after years of complaining about not getting meal periods, were forced to eat in a maintenance room full of chemicals on those occasions when they were actually permitted time to eat a quick lunch. BRG was not only aware of, but actively encouraged this practice. Upon information and belief, BRG did not accurately record meal periods. Despite BRG's failure to provide Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, BRG didn't always provide Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

BRG failed to adequately reimburse Ms. Kaatz, Ms. Cornejo, and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring them to utilize their personal cellular phones for work purposes without reimbursement. Indeed, BRG would print out business cards for Ms. Kaatz, Ms. Cornejo, and other aggrieved employees and list their personal cell phone information on the cards for BRG's members/clients to contact them at any hour of the day, but failed to compensate them for their personal cell phone costs. Furthermore, all communications between Ms. Kaatz and Ms. Cornejo with their supervisors regarding work-related tasks were necessarily conducted on their personal cell phones. At one point during their employment there were discussions amongst BSR's supervisors regarding reimbursing Ms. Kaatz and Ms. Cornejo for their cell phone costs, indicating that BRG was keenly aware that they should have been doing so, but they simply elected not to. As a consequence, BRG failed to reimburse Ms. Kaatz, Ms. Cornejo, and other aggrieved employees for all necessarily incurred business expenditures in violation of Labor Code § 2802 & 2804.

As a result of BRG's failure to pay all minimum/overtime wages and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, BRG has maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements. Furthermore, the wage statements BRG issued to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were facially noncompliant in violation of Labor Code 226(a)(8) in that they failed to list the proper legal entity that is the employer. Specifically, BRG issued wage statements identifying itself as both "Blue Star Resort & Golf" and "Blue Star Resort", rather than the actual legal name of the entity employer "Bluestar Resort & Golf, LLC", constituting facial wage statement violations.

Furthermore, BRG violated Labor Code § 204 by failing to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees all wages earned at least twice during each calendar month.

BRG failed to meet its obligations to provide paid sick leave to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit employees who worked 30 or more days within a year to accrue paid sick leave, and allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requires for being able to accrue and utilize paid sick leave, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b). Additionally, to the extent that sick pay was ever provided to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees, it was not paid at the proper regular rate of pay (as discussed above), due to BSR’s failure to account for all forms of compensation when determining its employees’ respective regular rates of pay.

Finally, BRG failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Ms. Kaatz, Ms. Cornejo, and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; vi) the address of the legal entity that is the employer; vii) the telephone number of the employer; viii) identifying information for the employer’s workers’ compensation insurance carrier; and ix) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees, BRG failed to do so in violation of Labor Code § 2810.5.

As described above, BRG committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 2 (“Wage Order 2”):

Minimum Wage Violations

BRG was required to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 2 § 4. As alleged above, BRG maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. Kaatz, Ms. Cornejo, and other aggrieved employees whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

BRG was required to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; Wage Order 2, § 3. Wage Order 2, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, BRG caused Ms. Kaatz, Ms. Cornejo, and other aggrieved employees to work overtime hours but did not compensate Ms. Kaatz, Ms. Cornejo, and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, BRG failed to provide Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with all required and compliant meal periods due to BRG's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. See Labor Code §§ 226.7 and 512; Wage Order 2, § 11. As a result, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, BRG also failed to authorize and permit Ms. Kaatz, Ms. Cornejo, and other aggrieved employees to take all required paid rest periods. See Labor Code §§ 226.7 and 516; Wage Order 2, § 12. As a result, Ms. Kaatz, Ms. Cornejo, and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Failure to Reimburse Necessary Business Expense

BRG was subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or obedience

to the directions of the employer.” BRG was subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.” As alleged herein, due to BRG’s unlawful reimbursement practices, BRG failed to indemnify Ms. Kaatz, Ms. Cornejo, and other aggrieved employees for all necessary business expenses incurred.

Wage Statement Violations

BRG was required to furnish Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. See Labor Code §§ 226(a) and 1174(d); Wage Order 2, § 7. Furthermore, the wage statements issued by BRG were facially in violation of Labor Code 226(a)(8) in that they failed to list the legal name of the employer entity. As a result of BRG’s failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, BRG maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. BRG failed to timely pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees’ separation of employment. Pursuant to Labor Code § 203, BRG’s failure to pay all final wages due to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees was willful and, consequently, entitles Ms. Kaatz, Ms. Cornejo, and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day BRG failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As “aggrieved employees,” Ms. Kaatz and Ms. Cornejo will initiate a civil action on behalf of themselves and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Kaatz and Ms. Cornejo’s own investigation, and on information and belief, BRG committed and continue to commit the following Labor Code violations:

- a. BRG violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees the statutory minimum wage for all hours worked;

- b. BRG violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees all overtime compensation earned;
- c. BRG violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. BRG violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Kaatz, Ms. Cornejo, and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees at their respective regular rates of compensation;
- e. BRG violated Labor Code §§ 2802 and 2804 by failing to reimburse Ms. Kaatz, Ms. Cornejo, and other aggrieved employees for all work-related expenses incurred;
- f. BRG violated Labor Code § 226 by failing to furnish Ms. Kaatz, Ms. Cornejo, and other aggrieved employees with accurate and compliant itemized wage statements;
- g. BRG violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Ms. Kaatz, Ms. Cornejo, and other aggrieved employees;
- h. BRG violated Labor Code § 204 by failing to pay Ms. Kaatz, Ms. Cornejo, and other aggrieved employees all wages earned at least twice during each calendar month;
- i. BRG violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Kaatz, Ms. Cornejo, and other aggrieved employees; and
- j. BRG violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. Kaatz, Ms. Cornejo, and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and BRG if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

LWDA
May 12, 2023
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Very truly yours,
STANSBURY BROWN LAW, PC

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

Ethan C. Surls

cc: Bluestar Resort & Golf (via certified mail)