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May 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:

JFC International, Inc.
7101 E. Slauson Ave.
Los Angeles, CA 90040

Catherine Gormley
Teraoka & Partners LLP
Four Embarcadero Center, Suite 1400
San Francisco, CA 94111-4164

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Jorge Fletes
Employer: JFC International, Inc.

Dear Sir or Madam:

Jorge Fletes (“Claimant”) has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employer, JFC International, Inc., a California Corporation (hereafter “Employer”).

Claimant worked for Employer until May 20, 2022, as a local driver and warehouse worker. Due to unlawful conditions of employment, 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 Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

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

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and includes 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 as a result of unlawful employment practices, including time shaved from timecards by rounding, miscalculating hours worked, and interrupted meal periods, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Unpaid Wages – Miscalculated Overtime and Doubletime

Employer failed to properly calculate and pay overtime and doubletime hours worked for Claimant and his coworkers. For example, during Claimant’s 5/1/22-5/15/22 payperiod, Claimant worked 80 regular hours and 11.36 hours, however he was paid for 80 hours at his regular rate of pay and only 8.70 hours of overtime pay. This policy and practice of miscalculating hours worked resulted in unpaid hours for Claimant and aggrieved employees.

Unpaid Wages – Rounding

Employer rounds Claimant and aggrieved employee timecards to the quarter hour in a manner that favors Employer. Indeed, with Employer’s strict policies against arriving to work late, as well as returning from meal periods late, so Claimant and aggrieved employees clock in before their start time and this consistently benefitted Employer. However, Claimant and aggrieved employees’ wage statement consistently show hours rounded to the nearest quarter hour.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, 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. Unpaid meal periods were interrupted with work causing employees to work while off the clock. Claimant and aggrieved employees have been

employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee 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 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

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, Claimant and aggrieved employees have been required to work off the clock and have been paid zero wages for that time, clearly resulting in failure to pay for all hours worked, including overtime, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Timely Meal Breaks and Second 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 missed second meal periods, and first and second meal periods were often interrupted and noncompliant. Claimant worked numerous shifts well in excess of 10 hours with no second meal period. Moreover, employer rounding of meal period clock in and clock out times is unlawful. The California Supreme Court issued a ruling on February 25, 2021, holding that employers may not round employee time punches when employees clock in and out for meal periods. All meal periods are noncompliant as a result of employer rounding.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided 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 meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

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 his 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

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

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 missed rest periods. On many occasions, no breaks were provided.

Employer failed to pay Claimant and similarly situated employees all 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 missed rest periods. 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) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Rest periods were not 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 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. As a derivative claim, Claimant alleges that his 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.

Failure to Pay Accrued Vacation Upon Separation

(Cal. Lab. Code §§227.3, 558 and 2698 *et seq.*)

Cal. Lab. Code §227.3 provides that whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid as wages at the final hourly rate. In this case, Employer failed to pay accrued vacation wages to Claimant and aggrieved employees upon termination in violation of §227.3.

Employer is liable for failure to pay accrued vacation wages to Claimant and aggrieved employees, and Claimant seeks damages under §558 and 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, the correct number of overtime and double time hours worked, and meal and rest penalties among other deficiencies derivative of the claims above. 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.

Additionally, the paystubs for pay periods often did not match the period stated in the time records. Not only does this create liability for underpaid wages as discussed above, but it also fails to correctly state the number of hours actually worked by employees during a payperiod. Employers issued and maintained inaccurate wage statements and records. Employers are liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

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 these claims as a representative action in civil court.

Sincerely,

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

Nazo Koulloukian, Esq.
Attorney for Claimant