



VIA ELECTRONIC FILING

June 30, 2023

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

VENTURA COLFAX LLC
ATTN: KENNETH JONES
30 MAUCHLY, SUITE C
IRVINE, CA 92618

VENTURA COLFAX LLC
KENNETH JONES
2109 MIRAMAR DRIVE
NEWPORT BEACH, CA 92661

VENTURA COLFAX LLC
JEFFREY BEST
314 N. VISTA STREET
LOS ANGELES, CA 90036

CHANEL KENNEDY v. VENTURA COLFAX LLC

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Ms. Chanel Kennedy (hereinafter “our client” or “Ms. Kennedy”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for **VENTURA COLFAX LLC** (hereinafter “COLFAX”) at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individuals KENNETH JONES and JEFFREY BEST are being included in this PAGA notice pursuant to Labor Code Section 558.1 as they were and are owner/director/managing agent of



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VENTURA COLFAX LLC, were involved in the day-to-day operations of the restaurants, and as such, controlled the wages, hours, and working conditions of Ms. Morales and other similarly situated aggrieved employees. VENTURA COLFAX LLC was Ms. Kennedy's and other employees' employer and operated the FIREFLY Restaurant during the PAGA period.

Ms. Kennedy started working for FIREFLY Restaurant as a server sometime on or around October 15, 2021 and worked there for approximately a little over one year. Ms. Kennedy is classified as an hourly, non-exempt employee. Ms. Kennedy and others were compensated every 2 weeks.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Ms. Kennedy can equivocally bring the following labor code violations on behalf of all other employees, including hourly, non-exempt employees who were not specifically servers.

It is our position that COLFAX has committed the following labor code violations against our client and other hourly, non-exempt employees who worked for COLFAX at any of their California locations during the relevant PAGA period:

COLFAX did not provide Ms. Kennedy and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Ms. Kennedy and others were not paid for all hours worked and consistently worked "off





the clock.” This is so also to the extent employees such as Ms. Kennedy and others worked through their meal and rest periods. Those meal and rest periods were interrupted and/or not provided at all, as such they were not compensated for that time, which would be akin to a minimum wage violation.

Additionally, COLFAX violated Labor Code Section 351 and Section 353 by taking some of the tips meant for employees and also deducting the tips from Ms. Kennedy and others’ earned wages. COLFAX also deducted the credit card fee from Ms. Kennedy and others’ tips and did not timely provide the credit card and even cash tips to Ms. Kennedy and other similarly situated aggrieved employees.

Due to the above “off the clock” violations and as a matter of company policy, COLFAX violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Ms. Kennedy’s and others’ actual work hours, which included the “off the clock” work as described above, entitled them to overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees all due overtime, as such COLFAX did not accurately calculate employees’ true regular rate of pay for purposes of deciphering their correct overtime rate of pay.

COLFAX violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. COLFAX did not completely relieve our client of all duty during said rest periods. COLFAX did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was not part of COLFAX’s culture for employees such as Ms. Kennedy and others to take at least one 10-minute rest break every day wherein they are relieved of all work duties. Ms. Kennedy and others were too busy to be able to take rest breaks because there was no coverage for the tables. Taking rest breaks meant leaving customers unattended and that could not happen. As such, rest breaks were not enforced and not a policy or practice of the restaurant. In fact, Ms. Kennedy did not receive a single timely, uninterrupted rest break throughout her employment tenure.

COLFAX also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 5 because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. COLFAX did not completely relieve our client of all duties during said meal periods. COLFAX did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory meal periods was not provided. If COLFAX had Ms. Kennedy sign a meal period waiver, it would not be valid and enforceable since Ms. Kennedy and others



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generally worked more than a 6-hour shift. If COLFAX had Ms. Kennedy sign an on-duty meal period agreement wherein Ms. Kennedy agreed to work through her meal period, it would also be invalid and unenforceable because the nature of Ms. Kennedy's job as a server does not prevent her from taking a meal period. As such, Ms. Kennedy and others never received statutory, timely meal periods during their employment. In other words, there was rarely an uninterrupted and timely 30-minute meal period for any employees, including Ms. Kennedy. As was the case with rest periods, meal breaks were definitively not part of the COLFAX's culture, especially in a fast-paced restaurant environment. The meal periods were not authorized and were not enforced. Moreover, even if Ms. Kennedy was somehow able to get a meal period, it would be untimely and be interrupted by work-related tasks. Furthermore, even if COLFAX did in fact provide meal period penalties to Ms. Kennedy and others for late, short, interrupted, or no meal periods, that does not absolve COLFAX of PAGA penalties. In *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256, the Court stated that "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay" (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See also *Wert v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

Furthermore, during the relevant time period, COLFAX failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including the minimum wages and overtime as described above as well as meal/rest break premiums. COLFAX was also in violation of California Labor Code section 226(a) by not providing access to paystubs and failing to include pertinent information on the wage statements, including but not limited to, all hours worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal name and address of the employer, the correct beginning and end of the pay period, all applicable hourly rates, and all identifying employee information, among other items. As such, COLFAX did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

COLFAX violated Labor Code § 203 because it willfully failed to pay Ms. Kennedy and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked including minimum wages and overtime compensation, tips, and premiums for the missed meal and rest breaks.

During the relevant time period, COLFAX also failed to keep accurate and complete payroll records showing the actual hours worked per day (including the time for meal and rest periods) and the wages paid to our client and other aggrieved employees pursuant to California Labor Code sections 1174(d).





Additionally, during the relevant time period, Ms. Kennedy and others incurred necessary, business-related expenses and costs that were not reimbursed by COLFAX. These costs include, but are not limited to, reimbursement for use of personal cell phones for work purposes in having to clock-in/clock out on a cell phone application. Accordingly, COLFAX was in violation of California Labor Code sections 2800 and 2802. Moreover, COLFAX failed to provide sick pay in violation of Labor Code Sections 233 and 246.

Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please note, Ms. Kennedy's claims also include retaliation, wrongful constructive termination, discrimination, harassment, FEHA claims, as well as any other claims associated therewith or arising therefrom.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our client also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by COLFAX.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Sincerely,

Patil T. Derderian, Esq.



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