

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

August 31, 2023

VIA LWDA WEBSITE

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

Re: *Johanna Carlton v. Great Lakes Services, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Johanna Carlton (“Ms. Carlton”) in claims arising from her employment with Great Lakes Services, LLC, a Delaware limited liability company, and Does 1 through 100 (“Defendants”). Ms. Carlton is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Ms. Carlton worked for Defendants as a Server and Bartender from approximately February 2016 to the present. Defendants operate a chain of indoor water park resorts with locations in Manteca, CA and Garden Grove, CA. Ms. Carlton’s job duties consisted of serving food and drinks to resort guests. Ms. Carlton typically worked Wednesday through Sunday with shifts scheduled for either 6 or 8 hours.

Throughout Ms. Carlton’s employment with Defendants, Defendants have utilized an electronic timekeeping system accessed through a smartphone application. However, Defendants have failed in their affirmative obligation to maintain accurate records of employees’ hours worked and to compensate Ms. Carlton and other aggrieved employees for all hours actually worked. Specifically, Defendants frequently pressure employees to artificially clock out prior to ending a work period in order to avoid liability for a meal period penalty and/or overtime hours. Ms. Carlton and other aggrieved employees would also frequently be interrupted with work duties during their meal periods. As a result, Ms.

Carlton and other aggrieved employees have performed work off-the-clock with no compensation, resulting in unpaid minimum and overtime wages.

Defendants also hosted large banquets for which Ms. Carlton and other aggrieved employees served as bartenders and/or servers. During such events, Defendants charged the customers a mandatory gratuity, but upon information and belief, Defendants did not remit all such charges to its service employees and instead distributed these monies to themselves, managerial, and other ineligible employees. See *O'Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App. 5th 771, 790 (holding that gratuities, which can include mandatory service charges, must be paid only to non-managerial service employees involved with actual serving of food and beverages.).

In addition, Defendants' meal period policies/practices fail to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work, as well as second meal periods for shifts in excess of 10.0 hours. Specifically, Defendants fail to schedule meal periods throughout the workday and simply instruct employees that they should take a meal period when they find time and there are no customers waiting. However, due to a lack of coverage, this frequently results in missed, short, or untimely meal periods. Furthermore, Ms. Carlton and other aggrieved employees were often pressured to clock-out before reaching the end of their fifth hour of work, even if they were unable to actually take a duty-free meal period. Additionally, Defendants did not offer second meal periods when employees worked in excess of 10.0 hours. Furthermore, Defendants required that employees remain on-site during meal periods, and did not permit employees to leave and re-enter the parking garage during their shifts, thereby exercising improper employer control during purported meal periods. On occasions when Ms. Carlton and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants have failed to pay Ms. Carlton and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

Defendants have failed to provide Ms. Carlton and other aggrieved employees with all required rest periods, as a result of Defendants' unlawful rest period policies/practices. Specifically, Defendants did not schedule any rest periods and did not provide employees with any coverage to take rest periods resulting in a near-universal inability to take duty-free rest periods. Defendants also failed to provide Ms. Carlton and other aggrieved employees with an additional hour of premium pay at their respective regular rate of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7.

Defendants required that Ms. Carlton and other employees download a smartphone application for timekeeping purposes on their personal cell phone. Additionally, employees were asked to use their personal cell phones to play music at the various bars within Defendants' resorts. Ms. Carlton was also required to pay for a handheld "point of sale" credit card terminal to use while employed by Defendants. Despite requiring Ms. Carlton

and other aggrieved employees to incur work-related expenses, Defendants failed to reimburse these aggrieved employees for all necessary business expenses in violation of Labor Code section 2802.

Defendants failed to ensure that the temperature maintained in each work area was consistent with industry-wide standards for the nature of the work being performed. Specifically, certain bars within Defendants' resorts lacked functioning air conditioning and could reach temperatures in excess of 100 degrees Fahrenheit during hot days. As a result, Defendants have violated Wage Order 5, Section 15.

As a result of Defendants' failure to pay all overtime wages, minimum wages, gratuities, and meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Carlton.

Based on the foregoing, Ms. Carlton seeks to represent herself and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all of Defendants' aggrieved employees who worked for Defendants in California from one year prior to the date of this letter through the present.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage Order 5"):

Minimum Wage Violations

Wage Order 5, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon. Defendants failed to conform their pay practices to the requirements of the law by failing to pay Ms. Carlton and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 5.

Overtime Wage Violations

Defendants were required to properly pay Ms. Carlton and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 5. Wage Order 5, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours" per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Ms. Carlton and other aggrieved employees to work overtime hours but did not compensate Ms. Carlton or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Carlton and other aggrieved employees with all required and compliant meal periods. See Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As a result, Ms. Carlton 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.”).

Mandatory Gratuity Remittance Violations

Defendants also failed to remit to Ms. Carlton and other aggrieved service employees all gratuities owed to them. Specifically, Defendants routinely hosted private events and imposed mandatory venue and service charges for such events in lieu of traditional tipping. Despite collecting service charges, Defendants did not remit all such charges to its service employees and instead distributed shares of these service charges to itself, managerial, and other ineligible employees, in violation of Labor Code § 351. See *O’Grady v. Merchant Exchange Productions, Inc.* (2019) 41 Cal.App. 5th 771, 790 (holding that gratuities, which can include mandatory service charges, must be paid only to non-managerial service employees involved with actual serving of food and beverages.).

Rest Period Violations

As described above, Defendants also failed to authorize and permit Ms. Carlton and other aggrieved employees to take all required and compliant rest periods. See Labor Code §§ 226.7 and 516; Wage Order 5, § 12. As a result, Ms. Carlton and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that all rest periods were not authorized and permitted. See Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants failed to indemnify Ms. Carlton and other aggrieved employees for all necessary business expenses incurred, including, among other things, personal cellular phone usage. As a proximate result of Defendants’ policies and/or practices in violation of Labor Code §§ 2802 and 2804, Ms. Carlton and other aggrieved employees are entitled to damages, attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at trial, pursuant to Labor Code § 2802.

Excessive Heat Violations

Wage Order 5, § 15 establishes the right of employees to be provided a work environment of reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and requires employers to employ all feasible means to reduce excessive heat. Labor Code Sections 558 and 1198 make it unlawful for any employer to maintain conditions of work which violate the Wage Order. Defendants have failed to take adequate steps to prevent excessive heat and provide a work environment of reasonable comfort due to the excessive temperatures that are reached in its work areas, and are liable for civil penalties as a result.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Ms. Carlton and other aggrieved employees with complete and accurate wage statements with respect to gross wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Ms. Carlton and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, overtime and minimum wages, and meal and rest period premium wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

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

- a. Failing to pay Ms. Carlton and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Ms. Carlton and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Ms. Carlton and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages to Ms. Carlton and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to pay all gratuities to service employees, in violation of Labor Code § 351;
- e. Failing to authorize and permit Ms. Carlton and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premium wages to Ms. Carlton and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 516, 558;
- f. Failing to reimburse Ms. Carlton and other aggrieved employees for all work-related expenses incurred in violation of Labor Code §§ 2802 and 2804;
- g. Failing to maintain reasonable temperatures within work areas consistent with industry-wide standards in violation of Wage Order 5, § 15 and Labor Code §§ 558 and 1198;
- h. Failing to furnish Ms. Carlton and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- i. Failing to pay Ms. Carlton and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- j. Failing to maintain accurate records on behalf of Ms. Carlton and other aggrieved employees, in violation of Labor Code §§ 558 and 1174.

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Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC

A handwritten signature in blue ink, appearing to read "F. W. Schmidt", is written over the printed name.

Fletcher W. Schmidt

cc: Great Lakes Services, LLC, Eric Haggerty, 1325 J Street, Ste. 1550, Sacramento 95814, CA 93311, agent for service of process (via certified mail)