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October 4, 2023

Via E-filing:

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

Via Certified U.S. Mail:

Performance Food Group
12500 West Creek Parkway
Richmond, VA 23238

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Jorge Ramirez
Employers: Performance Food Group

Dear Sir or Madam:

Claimant Jorge Ramirez has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, CPA, to represent him, and all other aggrieved employees, for wage and hour claims against his former employers, Performance Food Group (hereafter “Employer”).

Employer is a national food service distributor. Claimant’s proposed PAGA representative action would represent numerous aggrieved employees. Claimant worked for Employer as an hourly, non-exempt employee until May 19, 2023.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and 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 For All Hours Worked, Including Overtime Hours Worked

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

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period as described below:

As a driver, Claimant was required to obtain his keys and ready his truck before clocking in. He was also required to secure his truck and return the keys after clocking out. Additionally, Claimant was frequently off-site during meal periods. He was not permitted to leave the truck during his meal period because there was merchandise in the truck, so he effectively remained on duty despite being off the clock. Claimant was also required to work through numerous rest periods, yet only received additional compensation for 0.02 hours for one rest period during his tenure with Employer.

As a result of the above unlawful policies and procedures, Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

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. 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 Include All Earnings in Regular Rate of Pay to

Calculate Overtime and Penalty Wages

(Cal. Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*)

Pursuant to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer pays additional wages including nondiscretionary bonuses to employees but fails to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime, and meal and rest period premiums.

It is well established that these additional earnings increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by

dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee's regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime, sick pay, or penalty pay rates to incorporate the additional pay, and this failure is reflected in aggrieved employees' paystubs. Employees have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§201.3, 204, 210, and 2698 *et seq.*)

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 these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Provide Rest Breaks

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

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant reports that he and his coworkers frequently missed rest periods despite consistently working shifts over 6 hours due to the press of work.

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 did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Order. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

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

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. 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(A) of the Wage Orders 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." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees frequently experienced late, short, and interrupted meal periods. Employer also required employees to sign second meal period waivers, however these agreements are invalid. For a meal break waiver to be valid, the employee must have received a first meal period. Here, because Claimant and aggrieved employees did not receive compliant first meal periods, the second meal period waivers are ineffective.

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; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. 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.

Failure to Reimburse For Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2698 *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 incur numerous expenses but were never reimbursed.

Employer required Claimant and other employees to use their personal cell phones for work purposes, including to download the ADP app, which is the only method employees received their paystubs. Employees were also required to use their personal phones to call supervisors and use navigation systems in trucks that lacked tablets.

Employer also required employees to maintain their own work uniforms but did not reimburse them for the cost of this use.

Employer never reimbursed employees for any of the above expenses. Employer is liable for civil penalties pursuant to Cal. Lab. Code § 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 and rest break penalty wages, 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 Claimant at the time 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. 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 Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2698 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

Wage statements did not state the correct legal address of the employer, but rather a P.O. Box.

Additionally, as a result of the unlawful employment practices discussed above, Claimant and others were unable to know the correct total hours worked, rates of pay, as well as the amount of penalty wages to which they are entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Failure to Provide Required California Paid Sick Days

(Cal Labor Code §§246, 247.5, 248.5, 2699 *et seq.*)

Employer failed to distribute and maintain required documentation concerning how many sick days were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. Claimant now seeks damages pursuant to §§248.5 and 2699 *et seq.*

Unlawful Agreements

(Cal. Labor Code § 246, 432.5)

Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment. For example, Employer required employees to sign an agreement stating that they would not accrue sick days until they have been employed for 60 days. However, Cal. Labor Code 246 requires that sick days begin to accrue upon 30 days. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Conclusion

Employer has 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 the claims as a representative action in civil court.

Respectfully submitted,

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

Nazo Koulloukian, Esq.
Attorneys for Claimant