



November 8, 2023

VIA Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY

PAGAfiling@dir.ca.gov

VIA CERTIFIED MAIL

Return Receipt Requested

Attn: William Massa, CEO

Natural Systems Utilities - CA, Inc.,

1070 Horizon Drive, Suite A

Fairfield, CA 94533

Re: Kenneth Nunes v. Natural Systems Utilities - CA, Inc.,

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION
2698 ET SEQ.**

To: Labor and Workforce Development Agency; Natural Systems Utilities - CA, Inc.

From: Kenneth Nunes, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, AP Law Offices, represent the interests of Kenneth Nunes ("Mr. Nunes"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Natural Systems Utilities - CA, Inc., ("Employer") is a California corporation with its principal business office located in Fairfield, California. Mr. Nunes began working for Employer in or around June 11, 2018 until on or about November 9, 2022.

Mr. Nunes alleges that Employer violated various sections of the Labor Code, including sections 201, 203, 204, 221 226, 226.7, 510, 512, 551, 1174, 1194, 1198, and 2802 by:

- a) Failing to pay Mr. Nunes and aggrieved employees all wages owed, including minimum, overtime, and double time wages;
- b) Failing to provide Mr. Nunes and aggrieved employees with compliant meal periods or premium compensation in lieu thereof;
- c) Failing to provide Mr. Nunes and aggrieved employees with compliant rest periods or premium compensation in lieu thereof;
- d) Failing to provide Mr. Nunes and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records;
- e) Failing to reimburse Mr. Nunes and aggrieved employees for necessary business expenditures; and
- f) Failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Nunes and the similarly aggrieved employees are identifiable current and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action. Mr. Nunes and similarly aggrieved employees were employed by Employer as non-exempt employees, in the position of Wastewater Operators and other related or similar occupations.

A. Employer failed to pay Mr. Nunes and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

Labor Code section 221(a) states “No employer shall ...make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division. “

Mr. Nunes and aggrieved employees were frequently required to perform work for which they were not paid. Mr. Nunes and the aggrieved employees were required to work through their meal periods to attend to their job duties without compensation for their time worked. Mr. Nunes and similarly aggrieved employees were also required to remain on call for up to a month at a time.

While on call, Mr. Nunes and similarly aggrieved employees were required to attend to the Employer's clients off the clock and without compensation for their time worked. Furthermore, Employer failed to compensate Mr. Nunes and aggrieved employees for time spent washing and maintaining Employer's uniform, including shirts with Employer's company name. Mr. Nunes and similarly aggrieved employees would have their uniform items soiled and saturated with fecal matter and other hazardous items due to the nature of their work which required the uniform clothing items to be washed separate and apart from their regular clothing.

Accordingly, since Mr. Nunes and aggrieved employees were not paid for all hours worked as described herein and specifically the hours in excess of eight (8) in a workday, or in excess of forty hours in a week, Employer failed to compensate them at the applicable minimum wage and overtime wage rate.

Employer's failure to pay Mr. Nunes and aggrieved employees for all hours worked, including applicable overtime and double time rates, as detailed above, is actionable under PAGA as a violation of Labor Code sections 510, 1182.12 and 1194.

B. Employer failed to provide Mr. Nunes and aggrieved employees with compliant meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Nor should an employer employ a person for a work period of more than ten hours without providing a second uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee with a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Nunes and aggrieved employees worked 8 hours or more each workday but did not frequently did not receive a timely, uninterrupted 30 minutes for meal periods. When Mr. Nunes and similarly aggrieved employees worked more than 10 hours in a shift, they were not provided with a second 30-minute uninterrupted meal period. When Mr. Nunes and aggrieved employees were not provided with lawful requisite meal periods, they were not compensated with one hour of pay at their regular rate of pay as required by law.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Nunes and aggrieved employees with compliant rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails

to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Mr. Nunes and other aggrieved employees were consistently not provided law rest periods and instead were required to attend to their job duties. Employer did not maintain a policy or practice to pay an additional hour of pay for interrupted or forgone rest breaks.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Nunes and aggrieved employees with accurate itemized wage statements

Pursuant to Labor Code section 226, subdivision (a), "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

By failing to pay Mr. Nunes and aggrieved employees for all hours worked, including overtime wages, and premium compensation for missed meal and rest periods, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate total number of hours worked, inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to reimburse Mr. Nunes and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, “[a]n employer shall indemnify his or her employee 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 her obedience to the directions of the employer.”

Employer failed to reimburse Mr. Nunes and aggrieved employees for the purchase and maintenance of uniform items including laundry detergent. Despite Mr. Nunes repeated requests to Employer that a washer machine and laundry detergent or professional laundry services be provided because of their duties working with fecal matter sanitation systems and other biohazard materials. Despite Mr. Nunes’ repeated request, Employer refused to provide Mr. Nunes and similarly aggrieved employees with laundry services or reimbursement for the cost of washing Defendant’s uniforms.

Employer’s failure to reimburse Mr. Nunes and aggrieved employees for all necessary business expenditures, as stated herein, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Nunes and aggrieved employees all wages earned and owed at separation of employment.

Pursuant to Labor Code section 201, subdivision (a), “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202, subdivision (a) provides, “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

At the time that Mr. Nunes and aggrieved employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed as well as for meal and rest premiums as described herein.

Labor Code section 203, subdivision (a), states that “[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” Accordingly, Mr. Nunes and aggrieved employees are entitled to thirty days of waiting time penalties.

G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Nunes becomes aware of additional compensation owed or losses incurred by Mr. Nunes or by any other aggrieved employee of Employer, Mr. Nunes expressly reserves the right to revise these facts and/or add any

new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

AP Law Offices, Inc.
Alexander Perez, Esq.
223 N. Garfield Ave., Ste. 106
Monterey Park, CA 91754
Tel: (213) 638-2726
Email: alex@aplawoffices.net

Sincerely,

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

Alexander Perez, Esq.
AP Law Offices, Inc.