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Via Online Submission
LABOR AND WORKFORCE DEVELOPMENT AGENCY
dir.tfaforms.net/411

VIA CERTIFIED MAIL *#9589 0710 5270 3375 6685 44*
Return Receipt Requested
Superior Fence Construction and Repair, Inc.
ATTN: Dominic Vella
380 Prosperity Drive
Rocklin, ca 95765

Re: *Jose Mateo Vega v. Superior Fence Construction and Repair Inc.*

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

To: Labor and Workforce Development Agency (LWDA); Superior Fence Construction and Repair Inc.: ("Employer").

From: Jose Mateo Vega, on behalf of himself and other aggrieved employees who were subject to the Employer's wage-and-hour policies described below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Jose Mateo Vega ("Employee" or "Mr. Vega"), 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

Superior Fence Construction and Repair Inc. (hereinafter "Employer") a California corporation, is a company primarily focusing on construction projects and remodeling of homes, among other things and was the Employer of Employee.

Employee is a former employee of Employer and worked for Employer as a Foreman helper from in or around 2019, through approximately November 15, 2025.

Employee alleges that Employer violated various sections of the California Labor Code, including sections 201, 202, 203, 204, 226, 1174, 1197.5, 1198, and 2802, by:

a) Failing to pay Employee, and Aggrieved Employees for all hours worked, including minimum and overtime wages at the appropriate rate;
b) Failing to provide Employee and Aggrieved Employees with compliant meal periods or premium compensation in lieu thereof;
c) Failing to provide Employee and Aggrieved Employees with compliant rest periods or premium compensation in lieu thereof;
d) Failing to provide Employee and Aggrieved Employees with accurate itemized wage statements;
e) Failing to reimburse Employee, and Aggrieved Employees for necessary business expenditures, such as Uniform maintenance;
f) Failing to pay Employee and Aggrieved Employees all wages earned and owed upon separation of employment, thereby triggering waiting time penalties.

Employee 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 this notice, and they allege the aforementioned violations of the Labor Code under PAGA.

A. Employer Failed to Pay Employee, and Aggrieved Employees for All Hours Worked, in Accordance with California law, Including Both Minimum Wage and Overtime

Employer failed to compensate Employee, and Aggrieved Employees at the legally mandated wage rates for all hours worked in violation of California law. Employer failed to add all remuneration paid to Employee, and Aggrieved Employees when calculating the regular rate for overtime purposes, as required by State law. Employer implemented an unlawful rounding policy that failed to compensate Employee and Aggrieved Employees for all hours worked, in violation of the applicable Wage Orders, regulations, and statutes. As can be seen from Employee's wage statements, Employer rounded the hours worked by the Employee and other Aggrieved Employees. Employee alleges that on average, this rounding favored Employer and therefore resulted in lost wages to Employee, and Aggrieved Employees. As a result, Employer failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code.

Further, to the extent that Employee, and Aggrieved Employees worked shifts of at least eight (8) hours per day, or forty (40) hours per week, all unpaid wages described above in excess of the hours specific herein were required to be compensated at a rate of at least one and a half times each employee's base rate of pay. To the extend such hours exceeded twelve (12) hours in one day or eight (8) hours on the seventh (7^{th}) consecutive day worked such hours were required to be compensated at a rate of at least (2) times each employees' base rate of pay. However, Employee, and Aggrieved Employees were not paid for all hours worked at the hourly rate required by law. Additionally,, Employer obligated Employee, and Aggrieved Employees to work off-the-clock. Further, Employer required Employees and Aggrieved Employees to continue to work through meal breaks while off-the-clock.

Employer's failure to pay Employee, and Aggrieved Employees for all hours worked, including applicable overtime rates, as detailed above is actionable under PAGA as a violation of the Labor Code and the Wage Order.

B. Employer Failed to Provide Employee and Aggrieved Employees with Meal Periods or Premium Compensation in Lieu Thereof, in Violation of California Law

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 shall an Employer employ a person for a work period for more than ten (10) hours without providing a second uninterrupted meal period of at least thirty (30) minutes. Further, when an Employer fails to provide an employee 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.

Employee and Aggrieved Employees worked eight (8) hours or more each workday but frequently did not receive a timely, uninterrupted thirty (30) minutes for meal periods due to the nature of their shifts and Employers failure to schedule Employee, and Aggrieved Employees in an overlapping manner so as to allow Employee, and Aggrieved Employees to take a timely, uninterrupted meal period. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-42). When Employee and Aggrieved Employees worked more than ten (10) hours in a shift they were not provided with a second thirty (30) minute uninterrupted meal period. *Id.* When Employee and Aggrieved Employees were not provided with lawful requisite meal periods, they were not compensated with one (1) hour of pay at their regular rate of pay as mandated by law. At all times, Employee and aggrieved employees never received premiums for missed or on-duty meal periods.

As a result of Employer's policy and practices, Employee, and Aggrieved Employees did not receive timely uninterrupted meal periods and were not compensated with premium wages for non-compliant meal periods. Employer's conduct is in violation of Labor Code Sections 226.7 and 512, the Wage Order, and is also actionable under PAGA.

C. Employer failed to provide Employee and Aggrieved Employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that Employer permit all employees to take a ten (10) minute rest period for every four (4) 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 (1) hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Frequently, Employee and Aggrieved Employees were not permitted to take the mandated rest periods due to Employer's failure to sufficiently staff shifts to provide relief. Specifically, Employee and Aggrieved Employees were consistently not provided lawful rest periods and instead were required to attend their job duties. Employer did not maintain a policy or practice to pay an additional hour of pay for interrupted or foregone rest breaks. No premiums were paid for missed rest periods.

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

D. Employer Failed to Provide Employee, and Aggrieved Employees with Accurate Itemized Wage Statements

Labor Code section 226, subdivision (a), requires Employer to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires Employer to keep accurate payroll records that include "the hours worked daily" by employees.

By failing to pay Employee, and Aggrieved Employees for all hours worked, including the applicable overtime rates and worked during the meal and rest periods and premium compensation for missed and/or late meal periods, and by manipulating the timesheets of Employee and Aggrieved Employees, Employer provided wage statements that were incomplete and inaccurate. Specifically, Employer provided wage statements with an inaccurate corresponding number of hours worked at each hourly rate which resulted in inaccurate gross and net wages, and inaccurate corresponding number of hours worked at each hourly rate.

Employee and Aggrieved Employees were not asked to verify actual time worked, and Employer failed to follow proper procedures to ensure that time spent for off-the-clock work were captured. Therefore, Employer provided wage statements with an inaccurate corresponding number of hours worked at each hourly rate which resulted in inaccurate gross and net wages. Thus, Employee and other Aggrieved Employees received wage statements that failed to include all rest and meal period premiums, reimbursements for all necessary business expenditures, compensation for actual and all hours worked, total hours worked, number of hours worked at each hourly rate, the correct overtime rate, gross and net wages earned.

Employers' conduct is not compliant with Labor Code sections 226 and 1174, the Wage Order, and is therefore actionable under PAGA.

E. Employer Failed to Reimburse Employee and other 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." The purpose of this statute is to "prevent employers from passing their operating expenses on to their employee," *Gattuso v. Harte-Hanks Shoopers, Inc.*, 42 Cal 4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Under Labor Code section 2802, "necessary" is defined to include all "reasonable" expenses. Plaintiff also alleges that Defendant required Plaintiff and Plaintiff Class to wear and maintain Defendant's mandatory uniforms without reimbursement.

The employer's obligation to reimburse business related expense arises when the employer "knew or should have known that its employees have incurred business related expenses. *Stuart v. RadioShack Corp.,* 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cl Dec. 6, 2010) (Hon. Susan Illston) (adopting the "knew or should have known standard" standard from RadioShack.)

i. <u>Employer Failed to Reimburse Employee and other Aggrieved Employees' for Maintenance of Uniforms</u>

Employee and other Aggrieved Employees were required to wear unfirms bearing Employer's logo. As a result, maintaining and cleaning these uniforms required regular laundering and upkeep beyond ordinary personal clothing maintenance. Despite requiring Employee and other Aggrieved Employees to wear mandatory logos uniforms for the benefit of Employer's business operations and public image, Employer failed to provide unform maintenance, laundering services, or reimbursement of the cost associated with cleaning and maintaining such uniforms.

Thus, Employer shifted their business expenses onto Employee and other Aggrieved Employees, in violation of Labor Code and Wage Order.

F. Employer Failed to Pay Employee and Aggrieved Employees All Wages Earned and Owed Upon Separation of Employment Including Waiting Time Penalties

Pursuant to Labor Code section 201, subdivision (a), "[i]f an Employers 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 Employee, and Aggrieved Employees resigned or were terminated, Employer failed to compensate them for all wages earned, including unpaid overtime and meal and rest period premiums, and owed at the applicable rate described herein.

Labor Code section 203, subdivision (a), states that "[i]f an Employers 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, Employee, 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, Employee becomes aware of additional compensation owed or losses incurred by Employee or by any other aggrieved employees of the Employer, Employee 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:

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Long Beach, CA 90802
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Sincerely,

Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC