WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com

Molly DeSario, Esq.
James Yoo, Esq.
Ruby Palomares, Esq.

October 22, 2024

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Bobby Thomas
Agent for Service of Process for:
Buttonwillow Warehouse Company, Inc.
3430 Unicorn Road
Bakersfield, CA 93308
(***Via Certified Mail, Return Receipt Requested***)
Certified #9489009000276637710295

Re: ***Jose Munoz v. Buttonwillow Warehouse Company, Inc.***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Jose Munoz ("Mr. Munoz" or "Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, et seq.) against Employee's former employer, Buttonwillow Warehouse Company, Inc. ("Employer").

The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations, which we allege Employer engaged in with respect to Employee and potentially all of Employer's Aggrieved Employees.

The Employee wishes to pursue this action as an Aggrieved Employee, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Employer in California as a non-exempt or hourly-paid Employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

The Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Employer owns and operates an industry, business, and establishment within the State of California and is, therefore, subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Throughout the Employee's tenure, the Employer compensated him with an hourly wage and classified him as non-exempt from overtime. The Employer generally scheduled the Employee for at least five days a week and at least eight hours each day. However, the Employee often worked more than eight hours per day and exceeded forty hours in a workweek.

Throughout the Employee's tenure, the Employer failed to compensate him for all hours worked, including minimum wage, straight time, and overtime wages. The Employer also did not provide legally compliant meal periods, did not authorize or permit rest periods, and failed to reimburse business expenses. Additionally, the Employer did not furnish accurate wage statements, and did not pay all wages upon termination. Furthermore, the Employer's managers systematically altered time records to conceal violations of the Labor Code. As detailed below, the Employee's experiences while working for the Employer were typical and illustrative of these issues.

<u>Mr. Munoz's Employment with the Employer</u>

The Employer is a California corporation that offers agronomic products and services at various locations across the state, including Kern County, where the Employee was employed. The Employee was an hourly, non-exempt worker. Mr. Munoz worked for the Employer as a Welder II from approximately December 2020 to July 2024, with primary responsibilities in repairing, painting, assembling, manufacturing of trailers and forklifting pallets.

In carrying out his duties, the Employee was frequently required to work off the clock, including overtime, without compensation. This included performing job responsibilities after clocking out and before clocking in at the request of management. For instance, almost every day the Employee drove from the company's hub to Buttonwillow and back all without being allowed to clock in. At management's request, Employee also had to get trucks off the yard, open/close the gates, prepare equipment, and forklifting pallets, all before clocking in and after having clocked out. The Employee regularly worked more than 12 hours per day and did not receive the appropriate premium pay. He communicated with the management and was required to do physical and drug tests off the clock.

Due to understaffing and heavy workloads, Employee was often unable to take timely and compliant meal and rest breaks. In fact, the Employee's meal breaks were almost always late and often shorter than 30 minutes due to urgent tasks such as offloading tractors or installing cameras. The Employer also did not provide an opportunity to leave the premises for meal periods. Furthermore, Employee never took his second meal break when he worked more than 10 hours and did not receive the compensation owed. When he did receive his meal break(s), they were often interrupted by supervisors.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses, which included, but were not limited to, using their personal cell phones for work-related communications, purchasing boots, tools, gloves, and obtaining weld, forklift, and mask certifications to perform their job duties.

Additionally, the Employee's pay stubs did not include all the necessary information, such as correct and necessary rest and meal break premiums and wages for all hours worked.

Further, by not paying all meal and rest break penalties due and all hours worked, Employer failed to pay all full and owed final wages in a timely manner.

These are just non-exhaustive examples of the facts and theories Employee asserts, which are described in more detail below.

<u>Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages</u>

Under California law, employers must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of employer and includes all the time the employee is suffered or was permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

During the statutory period, the Employer failed to compensate the Employee and some of the Aggrieved Employees for all hours worked, including minimum wage, straight time, and overtime wages. At times, the Employer required the Employee and some Aggrieved Employees to work "off-the-clock" without pay. For instance, almost every day the Employee drove from the company's hub to Buttonwillow and back all while remaining off-the-clock. At management's request, Employee also had to get trucks off the yard, open/close the gates, prepare equipment, and forklifting pallets, all before clocking in and after having clocked out. The Employee regularly worked more than 12 hours per day and did not receive the appropriate premium pay. He communicated with the management and was required to do physical and drug tests off the clock.

California Labor Code § 510 requires that Employer compensate Employee 1.5 times their regular rate of pay when Employee work over eight hours per day, 40 hours per week, or when Employee work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee's regular rate of pay when paying overtime, by failing to include all compensation in Employee's overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated the time records in order to pay them less.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the employee's fifth hour of work in a workday, and to allow employee to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, the Employer occasionally failed to provide Employee and some of the Aggrieved Employees with their legally mandated 30-minute uninterrupted and duty-free meal periods. This included, at times, not allowing them the opportunity to leave the work premises for their meals. The Employer also maintained control over Employee and the Aggrieved Employees by requiring, pressuring, or encouraging them to complete work tasks that could not be done without skipping mandatory meal breaks. Additionally, Employer denied the Employee and some Aggrieved Employees permission to take meal periods as required by law, without properly compensating them for missed meal breaks. For example, Employee's meal breaks were almost always late and often shorter than 30 minutes due to a heavy workload and urgent tasks, such as offloading tractors or installing cameras. Employer did not provide an opportunity to leave the premises for meal periods. Furthermore, Employee never took his second meal break when he worked more than 10 hours and did not receive the compensation owed. In fact, Employee's lunches were often interrupted by supervisors. Employer also did not provide employees with the opportunity to correct noncompliant meal break hours. As a result, Employer failed to provide meal periods to Employee and some Aggrieved Employees in accordance with California law.

Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employer, however, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employer is required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee’s work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as is required is itself a violation of California’s rest break laws.

Throughout the statutory period, Employer has occasionally failed to authorize and permit Employee and some of the Aggrieved Employees to take legally compliant rest periods as required by law. At times, Employer required Employee and some Aggrieved Employees to work more than four consecutive hours without allowing them a 10-minute uninterrupted and duty-free rest period for every four hours worked (or major fraction thereof), nor did the Employer compensate them for any unauthorized or unpermitted rest periods. For instance, the Employee took rest breaks only occasionally, and almost never during the summer months.

Instead, Employer, at times, continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks (including, but not limited to, continuing to work on the presses) which could not be completed without working in lieu of taking mandatory rest periods, or, at times, by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period or interrupting them. Accordingly, Employer, at times, failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law. Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employer’s failure, at times, to pay Employee and the Aggrieved Employees, or some of them, for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employer failed and refused to pay Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all missed meal and rest periods and all wages for all hours worked. As a result, Employer owed Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employee seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor, who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the Employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

However, Employer failed to keep accurate records of the hours worked and all meal periods taken or missed by the Employee and some of the Aggrieved Employees. Employer also altered, falsified, and manipulated these records. Despite the Employee bringing these violations to management's attention, no corrective action was taken. Furthermore, the management instructed Employee to enter inaccurate clock-in time and Employee's supervisor, [redacted], manually changed meal breaks time to comply with five-hour period.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Employee and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Order, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish their employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 the last four digits of their 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 (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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by employers to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

During the statutory period, the Employer has occasionally failed, and continues to fail, to provide the Employee and some of the Aggrieved Employees with timely, accurate, itemized wage statements that meet all legal requirements. Here, the Employee's pay stubs do not accurately reflect the rest and meal break premiums or the total wages for all hours worked.

Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per Employee. Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226(e)(2)(B)(iii) for failing to timely furnish accurate itemized wage statements.

Refusal to Make Payment

Labor Code section 216 declares unlawful employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employer, at times, violated and continues, at times, to violate Labor Code section 216 by failing to pay Employee and Aggrieved Employees, or some of them, for all hours worked at the proper wage rate and by failing to pay Employee and Aggrieved Employees, or some of them, an additional hour of pay for each meal and/or rest period not provided or that was invalid. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.)

These violations subject Employer to civil penalties under Labor Code § 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employees (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.[1]

Statutory Wage Violations

Labor Code § 223 makes it unlawful for employers to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Employer, at times, willfully and systematically denied Employee and other Aggrieved Employees, or some of them, of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employer, at times, acted with the intent to deprive some or all of them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

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[1] Labor Code § 225.5 (establishing that "<u>[i]n addition to, and entirely independent and apart from, any other penalty provided in this article,</u> every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee") (emphasis added).

Thus, Employer, at times, paid Employee and other Aggrieved Employees, or some of them, lower wages than those to which they were entitled, while purporting that Employee and all Aggrieved Employees were properly paid. As such, Employee and Aggrieved Employees, or some of them, are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) states that employers must indemnify their employees for all necessary business expenditures or losses incurred while directly discharging their duties. Throughout the statutory period relevant to this cause of action, the Employer has at times, wrongfully required Employee and some of the Aggrieved Employees to cover expenses they incurred in the direct performance of their duties for Employer. Employee and the Aggrieved Employees, at times, paid out-of-pocket for essential employment-related expenses. These employees incurred significant expenses as a direct result of their job duties for the Employer, yet the Employer failed to indemnify them for these costs. For example, Employee used his personal cell phone for work-related communications, purchased boots, tools, and gloves, and obtained weld, forklift, and mask certifications to perform his job duties, all without reimbursement.

As a result, the Employer is liable to the Employee and the Aggrieved Employees for the civil penalties outlined in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify them for necessary business expenditures.

Failure to Timely Pay All Wages at Termination

Labor Code sections 201 and 202 provide that, if employers discharge an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employers comply with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer, at times, failed, and continue, at times, to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 or 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), and missed meal and rest period premium wages.

Action for Civil Penalties Under PAGA

Pursuant to Labor Code Sections 2699(a) and (f), Employee and the Aggrieved Employees are entitled to civil penalties for Employer's violations of Labor Code Sections 201, 202, 203, 204, 210, 221, 223, 226, 226.7, 510, 512, 558.1, 1174, 1174.5, 1194,1197, 1197.1, 1198, and the applicable IWC Wage Order.

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

WILSHIRE LAW FIRM

m. desario

Molly DeSario, Esq.