

MALLISON & MARTINEZ
ATTORNEYS AT LAW
1939 HARRISON STREET, SUITE 730
OAKLAND, CA 94612
TELEPHONE: (510) 832-9999
FACSIMILE: (510) 832-1101

STAN S. MALLISON*
HECTOR R. MARTINEZ
CODY A. BOLCE
DANIEL C. KELLER
GONZALO QUEZADA
CAROLINE L. HILL
*MEMBER OF CA, NV, OR & WA BAR

VIA ELECTRONIC SUBMISSION TO THE CALIFORNIA DEPARTMENT OF
INDUSTRIAL RELATIONS AND CERTIFIED U.S. MAIL—RETURN RECEIPT
REQUESTED

December 27, 2023

Attention: PAGA Administrator
Agency Secretary
California Labor & Workforce Development Agency

Sysco Corporation
Attn: Agent for Service of Process
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

Sysco Corporation
1390 Enclave Parkway
Houston, TX 77077

Sysco Sacramento, Inc.
Attn: Agent for Service of Process
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive
Sacramento, CA 95833

Sysco Sacramento, Inc.
1390 Enclave Parkway
Houston, TX 77077

December 27, 2023

Letter to PAGA Administrator, Sysco Corporation, and Sysco Sacramento, Inc.

Re: Labor Code §2699 Notice by Aggrieved Employee Ricardo Magana

Page 2 of 5

RE: Labor Code §2699 Notice by Aggrieved Employees

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to California Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2699, *et seq.*, and supplements the notice previously submitted by our office on December 15, 2023. Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Sysco Corporation (“Sysco”), Sysco Sacramento, Inc. (“Sysco Sacramento”) (collectively “Defendants”), and their agents, managers, and supervisors for violations of the California Labor Code as described below. Sysco and Sysco Sacramento were aware of, complicit in, and actually caused the violations described below. I am writing on behalf of Ricardo Magana, an Aggrieved Employee represented by this law firm (hereinafter “Aggrieved Plaintiff”) who seeks to assert a PAGA claim on behalf of the State of California for Labor Code violations on behalf all other current or former employees who have been employed by Sysco and Sysco Sacramento in California.

Sysco is food wholesaler and restaurant supplier based in Houston, Texas that employs non-exempt employees in California through subsidiaries, such as Sysco Sacramento. This investigation request and notice of California Labor Code violations concerns the systematic failure by Sysco and Sysco Sacramento to pay current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission (“IWC”).

At the core of Sysco and Sysco Sacramento’s violations is the systematic failing to keep accurate time and payroll records; requiring, suffering, or permitting employees to perform unpaid work outside their scheduled worktime; refusing to provide proper rest and meal periods or to provide premium wages in lieu thereof; failing to pay premium/overtime wages; failing to provide accurate wage statements, and failing to pay all wages owed upon separation from employment.

The facts and theories underpinning this dispute are as follows: Aggrieved Plaintiff was employed directly and/or jointly by Defendants as a non-exempt employee at Defendants’ Pleasant Grove, California distribution center. In that capacity, Aggrieved Plaintiff and other non-exempt aggrieved employees were responsible for filling customer orders by selecting product from within the warehouse, assembling and packing orders, and scanning those packaged orders for distribution to Defendants’ customers. The work Aggrieved Plaintiff and other employees performed in that respect was governed by common, company-wide minimum productivity and accuracy standards maintained by Defendants, under which Employee productivity was measured by the number of packages they processed/scanned, and the extent to which they made errors in selecting product to fill customer orders. These policies were distributed to employees upon hire,

December 27, 2023

Letter to PAGA Administrator, Sysco Corporation, and Sysco Sacramento, Inc.

Re: Labor Code §2699 Notice by Aggrieved Employee Ricardo Magana

Page 3 of 5

and were entitled, without limitation, “PHASE-IN SCHEDULES,” “LABOR MANAGEMENT MINIMUM PERFORMANCE STANDARDS,” and “WEEKLY ERROR RATIO POLICY.” Upon receipt of these policies, employees were required to acknowledge their receipt thereof by signing and dating acknowledgement forms. Said policies provided that employees could be disciplined, up to and including termination, for failing to meet Defendants’ productivity/accuracy standards, and employees were in fact so disciplined.

Thus, Aggrieved Plaintiff and other employees worked under the threat of discipline for failing to meet those productivity and/or accuracy standards, and were accordingly pressured, encouraged, and/or exhorted to work off-the-clock and/or during meal and rest periods. Defendants had constructive and/or actual knowledge of such unpaid work time since scans were being performed during periods when employees were off-the-clock and/or during break periods, as reflected by the records maintained by Defendants, including, without limitation, electronic records of scans of orders filled by Aggrieved Plaintiff and other employees. Despite Defendants’ knowledge of these violations, it failed to pay minimum and/or premium wages for any of this required work time.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) (“PAGA”) may be based on a wide variety of Labor Code predicate provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 246, 510, 512, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.*, and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of the state of California. Sysco, Sysco Sacramento, and their agents and/or supervisors caused the violations described below by enforcing and carrying out their illegal policies. To wit:

1. Sysco and Sysco Sacramento have failed to pay Aggrieved Plaintiff and other non-exempt employees all wages earned, **including minimum wages**, in violation of Cal. Labor Code §§ 201, 202, 221, 1194, 1197 and 558, and the Wage Orders, by inaccurately keeping records of actual hours worked and wages earned, and by failing to pay for all hours worked. Specifically, Sysco and Sysco Sacramento required non-exempt employees to work “off-the-clock” by requiring them to perform work-related tasks during their unpaid meal periods, in order to meet the aforementioned productivity standards.
2. Sysco and Sysco Sacramento have violated California’s rest and meal break provisions, including Labor Code §§ 226.7, 512, and 558 and the Wage Orders, by discouraging breaks, not providing all requisite breaks, not relieving employees of all duty during break time, and/or requiring employees to work during their breaks in order to meet the aforementioned productivity standards.

December 27, 2023

Letter to PAGA Administrator, Sysco Corporation, and Sysco Sacramento, Inc.

Re: Labor Code §2699 Notice by Aggrieved Employee Ricardo Magana

Page 4 of 5

Non-exempt employees were denied paid rest periods. Non-exempt employees clocked out for their meal periods, which were usually significantly shorter than the required 30 minutes. These breaks typically occurred after the first five hours of their shifts.

Non-exempt employees were required to continue working in order to meet productivity quotas during their meal periods, but Sysco and Sysco Sacramento failed to compensate employees with premium wages in light of their incomplete or late meal breaks as prescribed by law.

3. Sysco and Sysco Sacramento failed to pay proper premium/overtime wages at one and one half the regular rate of pay for shifts greater than eight (8) hours in a workday and/or forty (40) hours in a workweek. It also failed to pay proper premium/double-time wages at double the regular rate of pay for shifts greater than twelve (12) hours in a day and/or eight (8) hours on any seventh consecutive workday of a workweek, in violation of Labor Code § 510 and the applicable IWC Wage Orders.

Specifically, Sysco and Sysco Sacramento required non-exempt employees to work shifts in excess of these thresholds without proper compensation. Overtime provisions of the Labor Code and IWC Wage Orders were violated by inaccurately keeping records of actual hours worked and wages earned by requiring, suffering, or permitting employees to work without compensation, by not compensating workers for all hours worked, including overtime hours and proper overtime pay, by not compensating for off-the-clock time, and by failing to pay for all hours worked within the meaning of the IWC Wage Orders.

4. For the above reasons, Sysco and Sysco Sacramento have failed to keep accurate time records and to provide accurate wage statements that reflect the actual hours worked and amounts earned, in violation of Labor Code §§ 226 and 1174 and the applicable Wage Orders.
5. Given the numerous violations indicated above, it is reasonable to conclude Sysco and Sysco Sacramento did not pay all wages owed to its non-exempt employees upon termination in violation of Labor Code § 203.

PLEASE TAKE NOTICE THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form, and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiff, the state, and other current or former employees under PAGA (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all

December 27, 2023

Letter to PAGA Administrator, Sysco Corporation, and Sysco Sacramento, Inc.

Re: Labor Code §2699 Notice by Aggrieved Employee Ricardo Magana

Page 5 of 5

schedules (both current and former) all timekeeping records, all rest and meal period records, all duty and responsibility records, all records with employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Sysco and Sysco Sacramento; Affiliated Companies, and owners, supervisors, managers, agents and all other person acting on behalf of Sysco and Sysco Sacramento – including but not limited to Affiliated Companies, and the managers and employers who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. Sysco and Sysco Sacramento have complete authority to implement and carry out the illegal payroll policies at issue herein. These violations are a uniform policy applied to all non-exempt workers at Sysco and Sysco Sacramento.

Aggrieved Plaintiff, who worked as a non-exempt employee for Sysco and Sysco Sacramento during the past year, may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 65 days, we will assume we may pursue this action under the theories described above against the Defendants described above and their managers, agents, owners, and other liable persons and entities (pursuant to §§ 210, 558, 1197.1, 2699(f), and other provisions).

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Keller", written over a horizontal line.

Daniel C. Keller, Esq.

Associate Attorney

MALLISON & MARTINEZ