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VIA ONLINE SUBMISSION TO LWDA

California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

VIA CERTIFIED MAIL

Harout Messelian
Messrelian Law
500 N. Central Ave., Suite 840
Glendale, CA 91203

Re: *Lyda P. Suarez v. Bagcraftpapercon III, LLC*
LWDA Claim No. LWDA-CM-1023349-24
Response to Notice of Labor Code Violations and PAGA Penalties

Dear LWDA:

Fisher Phillips is counsel for Bagcraftpapercon III, LLC ("Bagcraft") in this matter. Please direct all further correspondence regarding this matter to my attention.

The purpose of this letter is to respond to the Notice of Labor Code Violations and PAGA Penalties (the "Notice") submitted to the California Labor and Workforce Development Agency ("LWDA") by Lyda P. Suarez ("Suarez") on April 19, 2024, bearing LWDA No. LWDA-CM-1023349-24. The gravamen of Ms. Suarez's claims is that she and other employees were not allowed meal and rest breaks; were not paid premium pay for non-compliant meal and rest periods; were not compensated regular, overtime, and minimum wages for time spent working off the clock; were not provided proper sick leave; were not provided accurate wage statements; and were not provided with timely or final wages. Ms. Suarez has stated her intention to pursue a PAGA claim against Bagcraft.

As the LWDA is well aware, prior to initiating any PAGA claim in state or federal court, an allegedly aggrieved employee must strictly comply with the notice requirements contained in the California Labor Code. (Lab. Code, § 2699.3.) Indeed, proper notice is a "condition" of filing a PAGA lawsuit. (*Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 838; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545.) "The evident purpose of the notice requirement is to afford the relevant state agency, the Labor and Workforce Development Agency, the opportunity

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to decide whether to allocate the scarce resources to an investigation, a decision better made with knowledge of the allegations an aggrieved employee is making and any basis for those allegations. Notice to the employer serves the purpose of allowing the employer to submit a response to the agency (see Lab. Code, § 2669.3, subd. (a)(1)(B)), again thereby promoting an informed agency decision as to whether to allocate resources toward an investigation.” (*Khan v. Dunn-Edwards Corp.* (2018) 19 Cal.App.5th 804, 809.)

“A key inquiry upon receipt and review of the notice is whether sufficient “facts and theories” have been asserted regarding the alleged Labor Code violations.” (Simmons, Richard J., et al. “California’s Private Attorneys General Act (PAGA) Litigation and Compliance Manual (2020) § 10.1(a), p. 191.), quoting Lab. Code, § 2669.3, subd. (a)(1)(A).) “The notice requirement demands more than “a string of legal conclusions with no factual allegations or theories of liability to support them” and the failure to meet the required standard may result in the dismissal of PAGA claims.” (Simmons, supra, § 10.1(a), p. 191, quoting *Alcantar v. Hobart Serv.* (9th Cir. 2015) 800 F.3d 1047, 1057, interpreting California law.) Interpreting the statute, Courts have explained that “the Ninth Circuit requires an **exceedingly detailed level of** specificity for Section 2699.3(a)(1) to be satisfied.” (*Soto v. Castlerock Farming and Transport, Inc.* (E.D.Cal. Apr. 16, 2012) No. CIV-F-09-0701, 2012 WL 1292519 at *8 (emphasis added), citing *Archila v. KFC U.S. Props., Inc.* (9th Cir. 2011) 420 Fed. Appx. 667, 699.) In *Soto* and *Archila*, LWDA letters that lacked specific factual allegations were held insufficient to exhaust the administrative requirements of PAGA because they did not adequately describe the “facts and theories” that serve as the basis of the purported PAGA violation. (See *Soto*, 2012 WL 1292519 at *8.)

In the instant matter, Suarez generically alleges that she and the Aggrieved Employees were not paid all overtime wages because Bagcraft had a “company-wide policy and/or practice” of requiring employees to work off the clock. This allegation consists entirely of legal conclusions without any requisite “facts.” (See *Sinohui v. CEC Entm’t, Inc.* (C.D. Cal. 2016) 2016 U.S. Dist. LEXIS 85652, at **6–8, 2016 WL 3406383, at *3, citing California law (PAGA claim dismissed where the LWDA letter provided nothing more than a series of legal conclusions).) In asserting these conclusions, Suarez fails to provide the LWDA with any facts evidencing how she knows that Bagcraft had a company-wide policy of impeding employees from recording their hours worked or working off-the-clock. Also, in asserting these conclusions, Suarez fails to provide the LWDA with any facts that it could use to determine whether she and other employees were actually “required” to work off the clock, whether Bagcraft knew that she or other employees were performing any “work” off the clock, or whether Bagcraft was legally required to pay her or other employees for any off the clock “work” that they allegedly performed.

Likewise, Suarez alleges meal period and rest break violations because Bagcraft failed to authorize and permit her and the Aggrieved Employees to take timely and duty-free rest periods because Bagcraft had a “company-wide policy and/or practice” of understaffing its locations” and due to alleged scheduling workloads, but fails to include the specific facts and theories supporting the allegation with respect to other employees; rather Suarez only provides “examples” that allegedly affected Suarez (Lab. Code, § 2669.3, subd. (a)(1)(A)) in order “to determine what policies or practices are being complained of so as to know whether to fold or fight.” (*Alcantar v. Hobart Service* (9th Cir. 2015) 800 F.3d 1047, 1057, interpreting California law.) It is altogether unknown whether Suarez alleges that Bagcraft (or any specific employee of Bagcraft) affirmatively instructed employees not to take meal periods and rest breaks, alleges that Bagcraft refused the

requests of any employees to take meal periods or rest breaks, or alleges that any employees actually missed any of their required meal periods and rest breaks, other than Suarez's own "examples."

Similarly, in alleging that Bagcraft failed to provide sick pay, Suarez asserts that she was not given proper sick pay, but does not allege any facts that would allow the LWDA to evaluate the claims on this issue.

Next, Suarez further alleges that Bagcraft failed to pay her and other employees all wages that were due to them in a timely manner or at separation. In support of this claim, Suarez asserts only conclusory allegations based on the underlying claims alleged for minimum wage, overtime, reimbursements, and meal and rest periods. Accordingly, her claim in this regard must be considered legally deficient due to his failure to provide the specific "facts and theories to support the alleged violation" based on the underlying claims (Lab. Code, § 2699.3, subd. (a)(1)(A).)

Furthermore, while Suarez alleges that Bagcraft failed to provide her and other employees with accurate wage statements pursuant to Labor Code section 226, her claim in this regard is again entirely supported by legal conclusions based again on the underlying claims. This claim is entirely derivative of Suarez's other claims alleged in the notice. Suarez does not identify with specificity how such rates or amounts were incorrect or provide any facts sufficient to evaluate her contention that such rates or amounts were incorrect. Furthermore, while Suarez claims that her and other employees' wage statements did not correctly identify the amount of wages "earned," she does not specify whether she means that they did not correctly list the amount of wages that he and other employees were entitled to receive or whether they did not correctly list the amount of wages that he and other employees were actually paid (which is all that is required by law). Accordingly, because it is impossible for the LWDA to evaluate Suarez's claims or for Bagcraft to substantively respond thereto, they must be considered deficient as a matter of law. (Lab. Code, § 2699.3, subd. (a)(1)(A).)

Beyond the foregoing, Suarez's letter is devoid of any allegation regarding the number of potential violations, the dates and times of the violations and/or any manner in which an amount to resolve any deficiency could be calculated, other than her own self-serving "examples." Additionally, the correspondence does not allow Bagcraft to identify specific employees whose rights have been allegedly violated. As a result, the term "aggrieved employees" is unclear. And, such vague and generalized language prohibits Bagcraft from curing, investigating or responding to Suarez's allegations.

Notably, Bagcraft maintains compliant timekeeping and meal and rest period policies, which permit and encourage employees to take all legally required breaks and provides for the payment of meal period premiums whenever a rest or meal period is missed or is untimely. In addition, Bagcraft's timekeeping policy requires employees to remain clocked-in during all hours worked and strictly prohibits off the clock work. Finally, Bagcraft provides for sick pay. Suarez acknowledged understanding and receipt of Bagcraft's timekeeping and meal and rest period policies. Thus, contrary to Suarez's allegations, she was provided the opportunity to take her meal and rest breaks and acknowledged in writing that she was aware of the Company's meal and rest period policies and policies against off the clock work.

For reasons including, but not limited to, those set forth above, Suarez's letter falls short of the *Archila* and *Soto* standards. Specifically, Suarez has failed to describe with the facts underlying her allegations with sufficient specificity and detail as to permits Bagcraft to substantively respond thereto or the LWDA to evaluate the legal merit thereof. Based on Suarez's failure to comply with PAGA's administrative requirements, Bagcraft submits this letter to request that the LWDA notify Suarez and her counsel that he may not pursue representative action claims against the company. Alternatively, Bagcraft requests that the LWDA require Suarez to provide additional information to support her administrative complaint and to preserve the company's defenses in any civil complaint that Suarez might subsequently attempt to file.

If you have any questions regarding the above, please do not hesitate to contact us at any time.

Best Regards,

A handwritten signature in black ink, appearing to read "Lonnie D. Giamela". The signature is fluid and cursive, with a large "L" and "D" being prominent.

Lonnie D. Giamela
For FISHER & PHILLIPS LLP

LDG:ck