



May 3, 2024

Via Upload to the LWDA Website and U.S. Certified Mail

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

TO: California Labor and Workforce Development Agency; Manteca Star dba Carl's Jr.

*Kaetlyn Bogle, on behalf of herself, others similarly situated, and the general public v. Manteca
Star dba Carl's Jr.*

Factual Statement and Theories of Labor Code Violations

Kaetlyn Bogle was employed by Manteca Star dba Carl's Jr. ("Defendant") as a non-exempt, hourly employee in one of its restaurant stores located in California. Non-exempt, hourly employees, such as Ms. Bogle, performed services for Defendant in California. Ms. Bogle has worked for Defendant from approximately August 2022 to on or about January 15, 2024.

Ms. Bogle gives notice of her intent to file a lawsuit for violations of the Private Attorneys General Act of 2004 ("PAGA") for Defendant's failure to comply with California's wage and hour requirements on behalf of herself and similarly aggrieved employees.

Defendant operates Carl's Jr. locations. Defendant employs non-exempt, hourly employees to work at its locations.

I. Defendant Fail to Pay All Straight Time Wages Owed

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* sections 218 and 218.5 provide a right of action for nonpayment of wages. *California Labor Code* section 222 prohibits the withholding of part of a wage. *California Labor Code* section 223 prohibits the payment of less than a statutory or contractual wage scale. *California Labor Code* section 1197 prohibits the payment of less than the minimum wage. *California Labor Code* section 1194 states that an employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage. *California Labor Code* section 1194.2 states that an employee receiving less than the legal minimum wage is entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon. *California Labor Code* section 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is

expressly authorized in writing by the employee for specified purposes that do not have the effect of reducing the agreed upon wage.

Defendant has a continuous policy of not paying Ms. Bogle and similarly aggrieved employees for all hours worked in that Defendant has not paid for all the time Ms. Bogle and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or otherwise had work duties that went unpaid. Specifically, after Ms. Bogle and the aggrieved employees clock out for their shifts, Defendant asks them to perform additional work tasks. For example, after Ms. Bogle clocks out for her shifts, her manager would ask her to work on the ice machine.

In addition, Defendant has a continuous policy of not paying Ms. Bogle and the aggrieved employees for all hours worked in that Defendant continuously and consistently clocks Ms. Bogle and the aggrieved employees out for a meal period and/or requires Ms. Bogle and the aggrieved employees to record a meal period, even though Ms. Bogle and the aggrieved employees work through their meal periods, were unable to take meal periods, and/or were not free of all work duties and employer controls during meal periods. Thus, Defendant shaves/steals earned wages from Ms. Bogle and the aggrieved employees every day they work without a meal period and have time deducted.

Likewise, Ms. Bogle and the aggrieved employees are informed and believe and thereon allege that Defendant breached the legal duty to pay full wages to Ms. Bogle by deducting a portion of the wages earned by Ms. Bogle and the aggrieved employees when they work through their meal periods and/or when Defendant records a meal period for Ms. Bogle and the aggrieved employees when no meal period was taken. Specifically, Ms. Bogle and the aggrieved employees work through their meal periods to satisfy their demanding work duties imposed by Defendant, thereby denying them the right to be completely free from employer control under California law. Further, Ms. Bogle and the aggrieved employees are forced to work through their meal periods due to the Defendant providing insufficient staffing.

Defendant committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Ms. Bogle and the aggrieved employees. Defendant acted with malice or in conscious disregard of Ms. Bogle’s and the aggrieved employees’ rights.

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510 and 1194.

II. Defendant Failed to Pay Overtime

It is fundamental that an employer must pay its employees for all time worked. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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.

California Labor Code section 510 dictates that 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. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Defendant has a continuous policy of not paying Ms. Bogle and similarly aggrieved employees for all hours worked in that Defendant has not paid for all the time Ms. Bogle and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before "shifts" start, after "shifts" end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or otherwise had work duties that went unpaid. Specifically, after Ms. Bogle and the aggrieved employees clock out for their shifts, Defendant asks them to perform additional work tasks. For example, after Ms. Bogle clocks out for her shifts, her manager would ask her to work on the ice machine. When Ms. Bogle and the aggrieved employees work shifts lasting over eight (8) hours, these unpaid hours would qualify for the overtime rate.

In addition, Defendant has a continuous policy of not paying Ms. Bogle and the aggrieved employees for all hours worked in that Defendant continuously and consistently clocks Ms. Bogle and the aggrieved employees out for a meal period and/or requires Ms. Bogle and the aggrieved employees to record a meal period, even though Ms. Bogle and the aggrieved employees work through their meal periods, were unable to take meal periods, and/or were not free of all work duties and employer controls during meal periods. Thus, Defendant shaves/steals earned wages from Ms. Bogle and the aggrieved employees every day they work without a meal period and have time deducted. When Ms. Bogle and the aggrieved employees work shifts lasting over eight (8) hours, these unpaid hours would qualify for the overtime rate.

Likewise, Ms. Bogle and the aggrieved employees are informed and believe and thereon allege that Defendant breached the legal duty to pay full wages to Ms. Bogle by deducting a portion of the wages earned by Ms. Bogle and the aggrieved employees when they work through their meal periods and/or when Defendant records a meal period for Ms. Bogle and the aggrieved employees when no meal period was taken. Specifically, Ms. Bogle and the aggrieved employees work through their meal periods to satisfy their demanding work duties imposed by Defendant, thereby denying them the right to be completely free from employer control under California law. Further, Ms. Bogle and the aggrieved employees are forced to work through their meal periods due to the Defendant providing insufficient staffing. When Ms. Bogle and the aggrieved employees work shifts lasting over eight (8) hours, these unpaid hours would qualify for the overtime rate.

Ms. Bogle and the aggrieved employees have suffered, and continue to suffer, substantial unpaid

overtime wages, and lost interest on such wages, and expenses.

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

III. Defendant Failed to Provide Meal Periods

Under *California Labor Code* section 512 no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

Defendant breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendant failed to provide Ms. Bogle and the aggrieved employees with meal periods within the first five continuous hours of work.

Defendant breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Ms. Bogle and the aggrieved employees to clock out for meal periods but continue working due to Defendant providing insufficient staffing. In addition, Defendant would require Ms. Bogle and the aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by Defendant, thereby denying Ms. Bogle and the aggrieved employees of the right to be completely free from employer control under California law. Moreover, Ms. Bogle and the aggrieved employees would have to work through their meal periods and could not leave the premises but would nonetheless be required to clock out for thirty minutes to create the appearance of meal periods. Thus, Ms. Bogle and the aggrieved employees did not receive lawful meal periods while working for Defendant.

Further, Defendant did not provide second meal periods to Ms. Bogle and the aggrieved employees when they worked more than ten hours in a shift.

By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant willfully violated the provisions of *Labor Code* sections 226.7 and 512.

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a non-exempt employee who unlawfully was deprived of lawful first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Bogle has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* sections 226.7 and 512.

IV. Defendant Failed to Provide Rest Periods

Defendant has a consistent policy and/or practice of not providing duty free net ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Ms. Bogle and the aggrieved employees. Industrial Welfare Commission Order No. 5-2001 section 12(A) states "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Defendant has a consistent policy and/or practice of not providing net ten-minute rest periods to Ms. Bogle and all aggrieved employees and/or providing compensation in lieu thereof.

Defendant breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy requiring Ms. Bogle and the aggrieved employees to keep working during their rest periods, thereby denying Ms. Bogle and the aggrieved employees of the right to be completely free from employer control under California law. Defendant breached the legal duty to provide rest periods to employees by providing insufficient staffing resulting in Ms. Bogle and the aggrieved employees being deprived of duty-free rest periods.

Ms. Bogle and the aggrieved employees are not free of all work duties and/or employer control during rest periods. As such, Ms. Bogle and the aggrieved employees were not free of all work duties and/or employer control during rest periods.

By failing to provide lawful rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided rest periods, as alleged above, Defendant willfully violated the provisions of *Labor Code* section 226.7 and Industrial Welfare Commission Order No. 5-2001 section 12(A).

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest periods, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Bogle has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 and Industrial Welfare Commission Order No. 5-2001 section 20 for violations of *Labor Code* section

226.7 and Industrial Welfare Commission Order No. 4-2001 section 12(A).

V. Defendant Failed to Pay Wages Due at Termination and During Employment

Defendant willfully failed to pay, in a timely manner, wages owed to the aggrieved employees who left Defendant's employ or who were terminated.

The aggrieved employees who ended their employment with Defendant during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *Labor Code* sections 201 through 203.

At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' 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.

During the relevant time period, Defendant intentionally and willfully failed to pay the aggrieved employees who are no longer employed by Defendant their wages, that were earned and unpaid, at the time of their termination and/or within seventy-two (72) hours of their leaving Defendant's employ. Defendant failed to pay all straight time wages, overtime wages, and meal and rest period premiums as alleged herein within seventy-two hours of the aggrieved employees' separation from Defendant's employ. Defendant failed to ever pay all wages as alleged herein, thereby triggering the maximum penalties allowable under Labor Code section 203.

Defendant's failure to pay the aggrieved employees who are no longer employed by Defendant their wages, that were earned and unpaid, at the time of their termination and/or within seventy-two (72) hours of their leaving Defendant's employ, is in violation of *California Labor Code* sections 201 and 202.

California Labor Code section 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

As outlined above, Defendant has a continuous policy of not paying Ms. Bogle and similarly aggrieved employees for all hours worked in that Defendant has not paid for all the time Ms. Bogle and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before "shifts" start, after "shifts" end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or otherwise had work duties that went unpaid. Ms. Bogle and the aggrieved employees are owed these wages at the termination of their employment.

In addition, Defendant failed to pay all meal and rest period premiums owed to Ms. Bogle and the aggrieved employees.

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of sections 201 through 203.

VI. Defendant’s Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions

Section 226(a) of the *California Labor Code* requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Ms. Bogle and the aggrieved employees.

California Labor Code section 226 subdivision (a) requires that Defendant, at the time of each payment of wages, “furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when 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... (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 the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...”

Labor Code section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

In addition, *Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

Defendant has knowingly and intentionally failed to comply with *Labor Code* section 226(a) on each and every wage statement provided to Ms. Bogle and the other aggrieved employees.

In every pay period during the period of the relevant statute of limitations, Defendant knowingly and intentionally did not itemize the total hours worked on wage statements as *Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant knowingly and intentionally did not include the total hours worked on wage statements. As outlined above, Defendant has a continuous policy of not paying Ms. Bogle and similarly aggrieved employees for all hours worked in that Defendant has not paid for all the time Ms. Bogle and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or otherwise had work duties that went unpaid.

In addition, Defendant failed to pay all meal and rest period premiums owed to Ms. Bogle and the aggrieved employees.

Throughout the statutory period, as a result of the knowing and intentional failure by Defendant to comply with itemized employee wage statement provisions, Ms. Bogle and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

Further, in addition to any penalties levied upon Defendant for its failure to comply with *California Labor Code* section 226 subdivision (a)’s requirement to provide Ms. Bogle and the aggrieved employees accurate, itemized wage statements, *California Labor Code* section 226.3 assesses additional penalties for the failure to keep the records required in subdivision (a) of Section 226. *California Labor Code* section 226 subdivision (a) requires Defendant to maintain records that “accurately shows all of the information required by this subdivision.” Defendant has violated its statutory duty to maintain records for Ms. Bogle and the aggrieved employees that contain all of the information under *California Labor Code* section 226(a)(1) through (9).

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle, as a non-exempt employee who Defendant failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Ms. Bogle has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 226.

VII. Defendant Failed to Reimburse Employees for Business Expenses

Section 2802(a) of the *Labor Code* requires “[a]n employer [to] 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.”

Ms. Bogle and the aggrieved employees incurred expenses in the discharge of their duties without receiving reimbursement from Defendant. These expenses include, but are not limited to, having

to use their personal cell phones for business purposes. Defendant requires Ms. Bogle and the aggrieved employees to download the “Work Day” app to see their time worked, W2s, and paystubs. *California Labor Code* section 2802(a) entitles Ms. Bogle and the aggrieved employees to reimbursement for said necessary expenditures, plus interest and expenses.

These claims are for Ms. Bogle and all similarly situated non-exempt, hourly employees who worked for Defendant in California.

Ms. Bogle is an aggrieved employee with standing to bring an action under the PAGA. Furthermore, Ms. Bogle satisfies all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 2802(a).

VIII. Defendant Failed to Provide Paid Sick Days

Section 246(a) of the Labor Code requires “an employee who, on or after July 1, 2015, works in California for the same employer for thirty (30) or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section. *Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an employee shall accrue paid sick days at the rate of not less than one hour per every thirty (30) hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later.”

Defendant failed to provide paid sick days for all hours worked. Defendant’s failure to provide Ms. Bogle and the aggrieved employees paid sick days violates *Labor Code* section 247.5

California Labor Code 246(k) provides that, “[a]n employee may determine how much paid sick leave they need to use, provided that an employer may set a reasonable minimum increment, not to exceed two hours, for the use of paid sick leave.”

Under *California Labor Code* § 246(i), “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Pursuant to *Labor Code* section 248.5, when an employer fails to provide paid sick days in accordance with section 246, and when an employer fails to maintain any records documenting hours worked and paid sick days accrued in accordance with section 247.5, the person acting “on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.”

Defendant fails to provide paid sick days in accordance with these provisions. In addition, Defendant fails to itemize the amount of sick leave on wage statements or other written notice provided on the designated pay date.

These claims are for Ms. Bogle and all similarly situated non-exempt employees who worked for

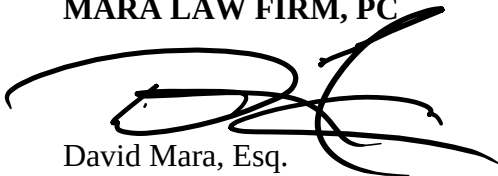
Defendant in California.

Ms. Bogle, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in *Labor Code* section 2699.5 for violations of section 246 and 247.5.

IX. Conclusion

If after 65 days from the date of this letter, the LWDA does not take action or declines to intervene, Ms. Bogle will file a complaint alleging PAGA violations, as described above.

Respectfully submitted,
MARA LAW FIRM, PC

A handwritten signature in black ink, appearing to read 'David Mara', with a large, stylized flourish extending from the end of the signature.

Attn: PAGA Administrator
California Labor and Workforce Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
Via Web Submission and Certified Mail

Charles T. Thompson
899 Cherry Avenue
San Bruno, CA 94066
Agent for Service of Process for Defendant Manteca Star, LLC
Via Certified Mail