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Superior Court of California,
Sacramento
10/22/2024
chapman
By _____ Deputy
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Nazo Koulloukian, SBN 263809
nazo@koullaw.com
KOUL LAW FIRM
3435 Wilshire Blvd., Suite 1710
Los Angeles, CA 90010
Telephone: (213) 761-5484
Facsimile: (818) 561-3938

Sahag Majarian, Esq. SBN 146621
sahagii@aol.com
Garen Majarian, Esq. SBN 334104
garen@majarianlawgroup.com
MAJARIAN LAW GROUP, APC
18250 Ventura Blvd.
Tarzana, CA 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff,
CRUZ MARIA CERECERES on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

CRUZ MARIA CERECERES, individuals, on) Case No.:
behalf of herself, all aggrieved employees, and)
the State of California as a Private Attorneys)
General,)

Plaintiff,

REPRESENTATIVE ACTION

vs.

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

BLUE DIAMOND GROWERS, a California
corporation, and DOES 1-50, inclusive,

Defendant.

BY FAX

1 Plaintiff CRUZ MARIA CERECERES brings this PAGA representative action complaint
2 on behalf of herself, all aggrieved employees, and the State of California as a Private Attorneys
3 General, and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff CRUZ MARIA CERECERES worked as an employee for Defendant BLUE
6 DIAMOND GROWERS, and Does 1-50 (collectively "Defendant"). Defendant is an agricultural
7 cooperative and marketing organization. Plaintiff CRUZ MARIA CERECERES worked for
8 Defendant as a Packer at Defendant's 1701 C Street facility in Sacramento where she worked for
9 almost four years until June of 2024.

10 2. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
11 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
12 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
13 are aggrieved employees.

14 3. Defendant failed to comply with California Labor Code requirements due to erroneous,
15 willful and intentional employment practices and policies. Plaintiff brings this representative
16 action on behalf of herself, all other similarly situated aggrieved employees, and the State of
17 California, based upon the claims articulated below. Plaintiff provided notice of their claims
18 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency ("LWDA") as
19 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
20 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
21 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
22 penalties under the Private Attorneys General Act ("PAGA"), Labor Code §2698 *et seq.*

23 4. Defendant has had a consistent policy and/or practice of: (1) failing to properly accrue
24 and pay for unpaid vacation; (2) failing to properly calculate and pay sick leave wages, (3) failing
25 to provide safe working conditions; (4) failing to pay wages due upon termination; (5) failing to
26 provide accurate itemized wage statements; and (6) failing to produce personnel records.
27 Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private
28 Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, as described more fully herein.

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1 11. The California Superior Court has jurisdiction in this matter because Plaintiff is a
2 resident of California and Defendant is qualified to do business in California and regularly conduct
3 business in California. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 12. During the relevant time-period, Defendant committed various violations of the
7 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
8 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

9 13. This representative action represents over one hundred current and former nonexempt
10 hourly employees of Defendant.

11 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
12 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
13 numerous Labor Code sections, as set forth more fully below.

14 15. Plaintiff and all current and former hourly nonexempt employees within one year of
15 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
16 *et seq.* (See Labor code §2699(c).)

17 16. Defendant, and each of them, has committed the following violations of the California
18 Labor Code:

19 **Failure to Properly Accrue and Pay for Unpaid Vacation**

20 (Cal. Lab. Code §227.3 and 2698 *et seq*)

21 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
22 incorporate said paragraphs herein by reference.

23 18. Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer
24 policy provides for paid vacations, and an employee is terminated without having taken off his
25 vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this
26 case, Defendant failed to properly calculate all accrued vacation and further failed to pay all
27 accrued vacation wages to Plaintiff and aggrieved employees upon termination. For this failure,
28 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. Seq.*

1 **Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly Accrue**

2 Cal. Labor Code §§246, 246(e)(4), 2698 et seq.)

3 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
4 incorporate said paragraphs herein by reference.

5 20. Starting January 1, 2024, Cal. Labor Code §246(e)(4) required employers to provide
6 40 hours of paid sick leave. Employers may choose an accrual policy or an up front policy. An
7 accrual policy is one where employees earn sick leave over time, with the accrued time carrying
8 over in each year of employment. Employees under an accrual plan must earn at least one hour of
9 paid sick leave for each 30 hours of work (the 1:30 schedule). An up-front policy makes the full
10 amount of sick leave for the year available immediately at the beginning of a year-long period.
11 Here, Plaintiff's time records reveal that Defendant is utilizing the accrual method yet fails to
12 properly accrue sick pay based on the number of hours worked.

13 21. As a result of these ongoing violations, Defendant is liable for, among other things,
14 civil penalties pursuant to Labor Code §2698 et seq

15 **Failure to Provide Safe Working Conditions – Excessive Heat**

16 (Cal. Labor Code §1198, Wage Orders)

17 22. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 23. Defendant's workplaces would get unsafely hot. Plaintiff and aggrieved employees
20 were forced to work in incredibly hot and unventilated workspaces reaching high indoor
21 temperatures. Despite complaints from employees, including Plaintiff, about the heat, Defendant
22 only installed fans to circulate the hot air. These fans were inadequate and failed to maintain a safe
23 indoor working environment. Defendant does not have sufficient climate control or ventilation.

24 24. Wage Orders require:

25 A. The temperature maintained in each work area shall provide
26 reasonable comfort consistent with industry-wide standards for the nature of the
27 process and the work performed.
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1 B. If excessive heat or humidity is created by the work process, the
2 employer shall take all feasible means to reduce such excessive heat or humidity
3 to a degree providing reasonable comfort.

4 25. By violating the wage order, Defendant is liable for civil penalties pursuant to §2698
5 *et. seq*

6 **Failure to Pay Wages Due Upon Termination**

7 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

8 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 27. An employee who is discharged must be paid all of his or her wages, including accrued
11 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
12 forth above, Defendant knowingly and willfully failed to pay all compensation, including sick pay
13 wages, due and owing to Plaintiff at the time employment terminated.

14 28. Defendant willfully failed to pay employees who are no longer employed by it all
15 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
16 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
17 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
18 Cal. Lab. Code § 2698 *et. Seq.*

19 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**

20 **Requirements**

21 (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

22 29. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 30. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
25 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
26 and keep accurate records as required by §1174(d). The statements provided to Plaintiff and
27 aggrieved employees, and the records maintained by Defendant, have not accurately reflected
28

1 accurate sick wages paid or vacation wages and thus have not accurately stated the accurate net
2 wages earned.

3 31. §226 (a) requires:

4 A. An employer, semimonthly or at the time of each payment of wages,
5 shall furnish to his or her employee, either as a detachable part of the check,
6 draft, or voucher paying the employee's wages, or separately if wages are paid
7 by personal check or cash, an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee, except as
9 provided in subdivision (j), (3) the number of piece-rate units earned and any
10 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
11 deductions, provided that all deductions made on written orders of the employee
12 may be aggregated and shown as one item, (5) net wages earned, (6) the
13 inclusive dates of the period for which the employee is paid, (7) the name of the
14 employee and only the last four digits of his or her social security number or an
15 employee identification number other than a social security number, (8) the
16 name and address of the legal entity that is the employer and, if the employer is
17 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
18 and address of the legal entity that secured the services of the employer, and (9)
19 all applicable hourly rates in effect during the pay period and the corresponding
20 number of hours worked at each hourly rate by the employee...

21 32. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
22 employees to sign employment related contracts and documents that contained unlawful terms of
23 employment.

24 **Failure to Produce Personnel Records**

25 (Cal. Labor Code §§ 226, 432, 1109.5, 2698 *et seq*)

26 33. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
28

1 34. In addition to their right to time and pay records, employees, and their representatives,
2 have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section
3 1198.5. This statute applies to both former and current employees. Labor Code section 432 further
4 specifies that employers must furnish copies of all employment records bearing the employee's
5 signature.

6 35. Labor Code section 1198.5 also requires that the file be made available for inspection
7 or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date
8 the employer receives a written request." An employer's failure to comply within this timeframe
9 likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750)
10 penalty from the employer. Lab. Code section 1198.5(k).

11 36. Defendant failed to timely produce or make available a current or former employee's
12 personnel records and/or payroll records when requested in letters dated June 24, 2024, and July
13 26, 2024, pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order.
14 Moreover, Defendant continues to fail to produce Plaintiff's records, and the records of other
15 aggrieved employees upon request, as required.

16 37. These violations subject Defendant to penalties under Labor Code sections 226, 1198.5,
17 and 2699.

18
19 **FIRST CAUSE OF ACTION**

20 **Against Defendant for Violation of the Private Attorneys General Act ("PAGA")**

21 **(California Labor Code §2698 *et seq.*)**

22 38. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 39. Plaintiff is an "aggrieved employee" under PAGA, as she was employed by Defendant
25 during the applicable statutory period and suffered one or more of the Labor Code violations set
26 forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other current and
27 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
28 attorneys' fees and costs.

1 40. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

4 41. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
5 Code provisions:

- 6 a. Failure to Properly Accrue and Pay for Unpaid Vacation (Cal. Lab. Code §227.3
7 and 2698 et seq);
- 8 b. Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly
9 Accrue (Cal. Labor Code §§246, 246(e)(4), 2698 et seq.);
- 10 c. Failure to Provide Safe Working Conditions – Excessive Heat (Cal. Labor Code
11 §1198, Wage Orders);
- 12 d. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
13 and 2698 et seq.);
- 14 e. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
15 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*);
- 16 f. Failure to Produce Personnel Records (Cal. Labor Code §§ 226, 432, 1109.5, 2698
17 et seq).

18 42. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
19 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
20 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
21 employee for each subsequent violation of Labor Code §226(a).

22 43. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
23 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
24 for each underpaid employee for each pay period for which the employee was underpaid, and one
25 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
26 for which the employee was underpaid.

27 44. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
28 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay

1 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
2 a civil penalty is not specifically provided.

3 45. Plaintiff and the other current and former employees of Defendant is aggrieved
4 employees. They were or are employed by Defendant, and each of them, and the violations alleged
5 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
6 current and former aggrieved employees.

7 46. At the time of each violation, Defendant employed one or more employees.

8 47. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
9 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
10 determined at trial, pre-judgment interest, costs and attorneys' fees.

11 48. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
12 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
13 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
14 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
15 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
16 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
17 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
18 employees and the State of California.

19 PRAYER FOR RELIEF

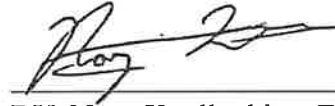
20 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
21 judgement against Defendant as follows:

- 22 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
23 determined at trial, but at least the jurisdictional amount of this Court;
- 24 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
25 and/or other applicable law;
- 26 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
27 law;
- 28

- 1 4. Pre-judgement and post-judgement interest as provided by law; and
2 5. Such other and further relief that the Court may deem just and proper.

3
4 DATED: October 21, 2024

5 **KOUL LAW FIRM, APC**

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8 BY: Nazo Koulloukian, Esq.
9 Attorneys for Plaintiff CRUZ MARIA
10 CERECERES, and all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

August 15, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Blue Diamond Growers
1802 C Street
Sacramento, CA 95811

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Cruz Maria Cereceres
Employer: Blue Diamond Growers

Dear Sir or Madam:

Claimant and aggrieved employee Cruz Maria Cereceres has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent her, and all other aggrieved employees in California, for wage and hour claims against her former employer, Blue Diamond Growers (hereafter referred to as “Employer”). Employer hired, assigned, and paid Claimant to work as a Packer at Employer’s 1701 C Street facility in Sacramento where she worked for almost four years until June of 2024.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, additional code sections cited below herein, and all applicable Wage Orders.

Failure to Properly Accrue and Pay for Unpaid Vacation

Cal. Lab. Code §227.3 and 2698 *et seq.*

Cal. Lab. Code §227.3 provides that “whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate.” In this case, Employer failed to properly calculate all accrued vacation and further failed to pay all accrued vacation wages to Claimant and aggrieved employees upon termination. For this failure, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

**Failure to Properly Calculate and Pay Sick Leave Wages – Failure to Properly
Accrue**

Cal. Labor Code §§246, 246(e)(4), 2698 et seq

Starting January 1, 2024, Cal. Labor Code §246(e)(4) required employers to provide 40 hours of paid sick leave. Employers may choose an accrual policy or an up front policy. An accrual policy is one where employees earn sick leave over time, with the accrued time carrying over in each year of employment. Employees under an accrual plan must earn at least one hour of paid sick leave for each 30 hours of work (the 1:30 schedule). An up-front policy makes the full amount of sick leave for the year available immediately at the beginning of a year-long period. Here, Claimant's time records reveal that Employer is utilizing the accrual method yet fails to properly accrue sick pay based on the number of hours worked.

As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §2698 et seq.

Failure to Provide Safe Working Conditions – Excessive Heat

Cal. Labor Code §1198, Wage Orders

Employer's workplaces would get unsafely hot. Claimant and aggrieved employees were forced to work in incredibly hot and unventilated workspaces reaching high indoor temperatures. Despite complaints from employees, including Claimant, about the heat, Employer only installed fans to circulate the hot air. These fans were inadequate and failed to maintain a safe indoor working environment. Employer does not have sufficient climate control or ventilation.

Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

By violating the wage order, Employer is liable for civil penalties pursuant to §2698 *et seq.*

Failure to Pay Wages Due Upon Termination

Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation, including sick pay wages, due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimants and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected accurate sick wages paid or vacation wages and thus have not accurately stated the accurate net wages earned.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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, except as provided in subdivision (j), (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 a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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...

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment related contracts and documents that contained unlawful terms of employment.

Failure to Produce Personnel Records
(Cal. Labor Code §§ 226, 432, 1109.5, 2698 et seq)

In addition to their right to time and pay records, employees, and their representatives, have the right to inspect and receive a copy of their personnel files pursuant to Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code section 432 further specifies that employers must furnish copies of all employment records bearing the employee's signature.

Labor Code section 1198.5 also requires that the file be made available for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days from the date the employer receives a written request." An employer's failure to comply within this timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from the employer. Lab. Code section 1198.5(k).

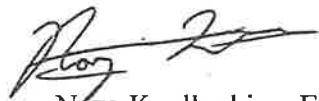
Employer failed to timely produce or make available a current or former employee's personnel records and/or payroll records when requested in letters dated June 24, 2024, and July 26, 2024, pursuant to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. Moreover, Employer continues to fail to produce Claimant's records, and the records of other aggrieved employees upon request, as required.

These violations subject Employer to penalties under Labor Code sections 226, 1198.5, and 2699.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue the claims as a representative action in civil court.

Respectfully submitted,



Nazo Koulloukian, Esq.
Attorney for Claimant