



September 17, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Maria Velasco v. Kraft Heinz Foods Company, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Maria Velasco in claims arising from her employment with Kraft Heinz Foods Company, LLC; and DOES 1 through 100 (collectively “KHF”). Ms. Velasco is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to KHF’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Ms. Velasco and the other aggrieved employees engage in interstate commerce activities in the course of their job duties. As such, Ms. Velasco and the other aggrieved employees are “Transportation Workers” exempt from arbitration within the definition of the Federal Arbitration Act. *See Southwest Airlines Co. v Saxon*, 596 U.S. 450 (2022); *Carmona v. Domino’s Pizza, LLC*, 73 F.4th 1135 (9th Cir. 2023); *Saige et al. v. U.S. District Court for the Central District of California*, No. 24-4072 (9th Cir. July 18, 2024).

KHF is in the business of food manufacturing in California. Ms. Velasco worked for KHF from approximately August 2006 through June 18, 2024, as a Forklift Driver. Ms. Velasco’s job duties included loading pallets of goods destined for interstate locations onto the forklift, moving pallets to the correct place, and generally driving/operating the forklift. Ms. Velasco typically worked Monday through Friday from approximately 1:30 p.m. to 9:30 p.m. As discussed below, Ms. Velasco worked considerably more hours than she was credited for on her wage statements. Ms. Velasco was paid at a rate of approximately \$26.77 per hour at the time of her separation with KHF.

For purposes of this letter, the “aggrieved employees” whom Ms. Velasco seeks to represent are the other aggrieved employees of KHF in California at any time during the one year preceding the date of this letter through the present.

Throughout the duration of Ms. Velasco’s employment with KHF, Ms. Velasco

and other aggrieved employees were not paid for all hours worked. Ms. Velasco estimates that she works approximately 30 hours of overtime per pay period, however, her check stubs do not compensate her for those hours. Consequently, due to KHF's unlawful timekeeping and payment policies and practices that failed to compensate for all hours worked, Ms. Velasco and other aggrieved employees have been deprived of all required minimum, overtime wages, and double time wages earned.

Furthermore, Ms. Velasco and other aggrieved employees routinely worked overtime hours but did not receive overtime compensation equal to one and one-half times their regular rate of pay for all overtime hours worked. KHF, paid Ms. Velasco and other aggrieved employees non-discretionary bonuses, commissions, and other forms of non-discretionary pay that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay are referred to as "Incentive Pay"). Despite KHF's payment of Incentive Pay to Ms. Velasco and other aggrieved employees, KHF failed to properly calculate the correct regular rate of pay for overtime purposes, thereby causing Ms. Velasco and other aggrieved employees to be underpaid all required overtime wages.

Ms. Velasco and other aggrieved employees were not authorized to take all legally required rest periods. Due to KHF's chronic and intentional understaffing of the facilities that Ms. Velasco and other aggrieved employees worked at, Ms. Velasco and other aggrieved employees were generally not permitted to exercise any compliant duty-free rest periods. As such, Ms. Velasco and other aggrieved employees would be made to work through their entire shifts except for those rare occasions they were afforded meal periods without any time to exercise rest periods. Furthermore, to the extent that Ms. Velasco and other aggrieved employees were ever authorized to exercise anything resembling a legally compliant rest period, they were not permitted to leave the facility, thus making any rest periods that KHF purport to have provided her inherently on-duty and non-compliant. Accordingly, Ms. Velasco and other aggrieved employees endured rest period violations, whether they were missed, short or on-duty on most, if not all, shifts they worked for KHF. Despite KHF's failure to authorize and permit Ms. Velasco and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, KHF never provided Ms. Velasco and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the time period in question, KHF maintained no payroll code or another mechanism for the payment of rest period premiums in the event Ms. Velasco and other aggrieved employees were not authorized to take lawful rest periods.

KHF also rarely, if ever, provided Ms. Velasco and other aggrieved employees with a compliant first meal period when they worked shifts in excess of 5.0 hours. Ms. Velasco and other aggrieved employees rarely, if ever, were entitled to exercise the use of a thirty-minute uninterrupted meal period despite always working at least 8.0 hours in a day. Rather, Ms. Velasco and other aggrieved employees' meal periods were frequently i) missed entirely; ii) shortened; iii) not exercised until after the fifth hour worked; and or iv) interrupted by management to discuss work-related matters. Furthermore, to the extent

that Ms. Velasco and other aggrieved employees ever received anything resembling a meal period, they were inherently non-compliant as KHF did not permit Ms. Velasco and other aggrieved employees to leave the premises of their job-sites at any point during their shifts. Additionally, upon information and belief, KHF did not employ any practices or procedures to accurately track the meal periods of Ms. Velasco and other aggrieved employees even on those occasions where they had an opportunity to exercise one. Ms. Velasco's shortened, late, and on-duty meal periods were a direct result of KHF's policy/practice. KHF also failed to provide second meal periods when Ms. Velasco and other aggrieved employees worked shifts in excess of 10.0 hours. Ms. Velasco frequently worked in excess of 10 hours during her employment, but she cannot recall receiving a second meal period. On those occasions when Ms. Velasco and the other aggrieved employees were not provided with all legally compliant meal periods to which they were entitled, KHF failed to compensate them with the required meal period premiums, as mandated by Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant time period, KHF maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not authorized or permitted to Ms. Velasco and the other aggrieved employees.

KHF failed to adequately reimburse Ms. Velasco for all reasonable and necessary work expenditures, including but not limited to, requiring Ms. Velasco and other aggrieved employees to utilize their personal cellular phones in the performance of her job duties. Ms. Velasco and other aggrieved employees conducted all work-related communications on their personal cellular phones, such as discussions with supervisors regarding assignments, scheduling, and any other matter that arose during their shifts and often after the conclusion of their shifts, but did not ever receive reimbursements for the necessary use of their personal cellular phones.

KHF failed to meet its obligations to provide paid sick leave to Ms. Velasco and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Ms. Velasco and other aggrieved employees were not provided paid sick leave on all of those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b).

As a result of KHF's failure to pay all minimum and overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof to Ms. Velasco and other aggrieved employees, KHF has maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and issued inaccurate wage statements.

Furthermore, KHF violated Labor Code § 204 by failing to pay Ms. Velasco and other aggrieved employees all wages earned at least twice during each calendar month.

Finally, KHF failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Ms. Velasco and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Ms. Velasco and other aggrieved employees, KHF failed to do so in violation of Labor Code § 2810.5.

As described above, KHF committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Minimum Wage Violations

KHF was required to pay Ms. Velasco and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 1 § 4. As alleged above, KHF maintained and maintains timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Ms. Velasco and other aggrieved employees whether by rounding, time-shaving, or otherwise. As a result of these policies/practices, which fail to compensate for all hours worked, Ms. Velasco and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

KHF was required to pay Ms. Velasco and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. Wage Order 1, § 3 requires an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, KHF caused Ms. Velasco and other aggrieved employees to work overtime hours but did not compensate Ms. Velasco and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, KHF failed to provide Ms. Velasco and other aggrieved employees with all required and compliant meal periods due to KHF's meal period policies/practices that often fail to provide 30 minute off-duty first meal periods before the end of the fifth hour of work. See Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As

a result, Ms. Velasco and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, KHF also failed to authorize and permit Ms. Velasco and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Ms. Velasco and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Failure to Reimburse for Necessary Business Expense

At all relevant times herein, KHF was subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...”. Due to KHF’s unlawful policy and practice of requiring employees to use their personal cellular phones in the performance of their job duties, KHF has violated Labor Code §§ 2802 and 2804.

Wage Statement Violations

KHF was required to furnish Ms. Velasco and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As a result of KHF’s failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, KHF maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Velasco and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. KHF failed to timely pay Ms. Velasco and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time

of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, KHF's failure to pay all final wages due to Ms. Velasco and other aggrieved employees was willful and, consequently, entitles Ms. Velasco and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day KHF failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Velasco will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Velasco's own investigation, and on information and belief, KHF committed and continues to commit the following Labor Code violations:

- a. KHF violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Ms. Velasco and other aggrieved employees the statutory minimum wage for all hours worked;
- b. KHF violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Velasco and other aggrieved employees all overtime compensation earned;
- c. KHF violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Velasco and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. KHF violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Velasco and other aggrieved employees from taking all required paid rest periods, and/or failing to pay all rest period premiums to Ms. Velasco and other aggrieved employees at their respective regular rates of compensation;
- e. KHF violated Labor Code § 226 by failing to furnish Ms. Velasco and other aggrieved employees with accurate and compliant itemized wage statements;
- f. KHF violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Ms. Velasco and other aggrieved employees;
- g. KHF violated Labor Code § 204 by failing to pay Ms. Velasco and other aggrieved employees all wages earned at least twice during each calendar month;
- h. KHF violated Labor Code § 245.5 by failing to permit and authorize Ms. Velasco and other aggrieved employees to exercise the use of their accrued paid sick leave days;

- i. KHF violated Labor Code §§ 2802 by failing to reimburse Ms. Velasco and other aggrieved employees for all necessary business expenditures;
- j. KHF violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Velasco and other aggrieved employees; and
- k. KHF violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Ms. Velasco and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and KHF if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC

A handwritten signature in black ink, appearing to read 'Ethan C. Surls', with a long horizontal line extending from the end of the signature.

Ethan C. Surls

cc: Kraft Heinz Foods Company, LLC (via certified mail)