



880 Apollo Street, Suite 336 ♦ El Segundo, CA 90245 ♦ Voice (310) 322-2211 ♦ Fax (310) 322-2252

October 1, 2024

VIA WEBSITE UPLOAD

State of California
Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

ABF Freight System, Inc.
P.O. Box 10048
Fort Smith, Arkansas 72917-0048

Re: *Gomez v. ABF Freight System, Inc.*

Dear ABF Freight System, Inc.:

This office represents Alejandro Gomez. We are informing you of our representation and ask that all further communication regarding this matter be directed to our attention at the address located on this letterhead, and that no contact be made directly with our client. This letter is sent pursuant to the provisions of California Labor Code, §§2699, *et seq.*

I. FACTS & NATURE OF THE DISPUTE

This is a Class Action lawsuit Plaintiff is bringing, seeking relief for Defendant's violations of the California Business & Professions Code §§ 17200 *et seq.*, including full restitution and disgorgement of all compensation retained by Defendant as a result of its unlawful and unfair business practices, as well as injunctive relief.

This action is on behalf of Plaintiff and others similarly situated to recover wages from Defendant due to Defendant's systematic failure to pay overtime, minimum wages, provide meal/rest breaks (or pay the statutory compensation due), to issue accurate wage statements, to pay all sick leave wages, to reimburse business expenses, to pay reporting time, to allow inspection of employment records and unfair competition.

Plaintiff seeks compensatory, statutory, declaratory, and injunctive relief for himself and all members of the Class, to compensate these workers for the unpaid wages and to protect current

and future workers of Defendant from being subjected to similar wage theft and otherwise unlawful working conditions.

II. § 2699, ET SEQ., LABOR CODE VIOLATIONS

Our client has numerous legal claims against ABF Freight System, Inc. Further investigation and formal discovery will likely uncover other claims and additional facts supporting liability herein.

The details of our client's Labor Code, §2699, claims include, but are not limited to:

A. OFF THE CLOCK WORK/ON-CALL SHIFT TIME (Labor Code § 203, 226, 510, 558, 1197, 1197.1, and 2699(f)(2))

Defendant was required to pay its employees for all time worked, even if employees were not clocked in or after they were clocked out. Defendant failed to pay Plaintiff and the Class for any off the clock work they performed.

Defendant required Plaintiff and the Class to regularly perform compensable tasks off-the-clock for which they did not receive any compensation. Specifically, Plaintiff and Class members were required to use their personal cell phones for work-related activities, such as texting/calling their supervisors/bosses, texting/calling their co-workers, for 5-10 minutes per month, while off-shift. Plaintiff and Class members received calls on their personal cell phones, when off-shift, for approximately 1-minute per call.

Further, Plaintiff and Class members do not have any fixed schedule. Instead, Plaintiff and Class members are on-call 24 hours per day, 7 days per week. If Plaintiff and Class members receive a call and do not answer, the on-call shifts require Plaintiff and Class members to call back to obtain a shift within 7-minutes. If they do not call Defendant back within 7-minutes, they lose priority in being called for on-call shifts. The on-call shifts require Plaintiff and Class members to arrive at work within 2 hours. Although Plaintiff and Class members have the option to decline shifts, doing so will cause them to lose priority and access to future shifts. Plaintiff and Class members do not receive any on-call time pay. Defendant only paid Plaintiff and Class members wages after they arrive to work and clock in for their shifts. Plaintiff was called in to work between 1 and 3 shifts per week. Between 4 to 6 days per week Plaintiff did not receive any on-call pay.

As a result, and because they improperly treated such off-the-clock activities and on-call shift time as non-compensable, Defendant failed to compensate Plaintiff and the Class for such time.

Plaintiff and Class members suffered damages in an amount, subject to proof, to the extent they were not paid for their off the clock work and on-call shift time.

B. FAILURE TO PAY PREMIUM OVERTIME WAGES DUE
(Cal. Labor Code §§ 510, 1198; IWC Wage Order No. 9)

Under California law, non-exempt employees as defined by Wage Order 9, are entitled to premium wages for overtime worked. Plaintiff and Class members engaged in off the clock activities, were subject to on-call shifts 24/7 and were not afforded compliant meal/rest breaks.

Defendant required Plaintiff and the Class to regularly perform compensable tasks off the clock for which they did not receive any compensation. Additionally, Plaintiff and Class members were restricted from leaving their work areas during their meal breaks. Also, Plaintiff and Class members' rest breaks were at times interrupted.

As a result, during this period, it was the practice and policy of Defendant to not pay employees at appropriate overtime rates. Monies for unpaid overtime remain due and owing.

Throughout Plaintiff's employment, Defendant failed and refused to pay compensation to Plaintiff and Class Members as required by law. The foregoing overtime compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime, Plaintiff and Class Members suffered damages in an amount to be proven at trial.

C. FAILURE TO PAY MINIMUM WAGES
(Cal. Labor Code §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 9)

Defendant failed to satisfy minimum wage requirements. As a result of Defendant requiring Plaintiff and Class members to engage in compensable tasks off the clock, on call-shift time and not paying Plaintiff and Class members for meal breaks/rest breaks not compliant, Plaintiff and members of the Class were paid less than minimum wage. This resulted in Defendant's failure to compensate Plaintiff properly for "all hours worked" and consequently underpaid Plaintiff and Class members for the actual hours Plaintiff and Class members worked in violation of *Labor Code* §§ 1197, 1198 and Wage Order 9.

D. FAILURE TO PROVIDE MEAL PERIODS
(Cal. Labor Code § 226.7; IWC Wage Order No. 9)

Defendant failed to provide compliant meal periods to Plaintiff and Class members in violation of Labor Code § 226.7 and IWC Wage Order No. 9. Plaintiff and Class members were restricted from leaving their work areas during their meal breaks.

By virtue of Defendant's unlawful failure to provide compliant meal periods to Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

E. FAILURE TO PROVIDE REST PERIODS
(Cal. Labor Code § 226.7; IWC Wage Order No. 9)

Defendant failed to provide uninterrupted rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 9.

By virtue of Defendant's unlawful failure to provide uninterrupted rest periods to the Plaintiff and the Class, Plaintiff and the Class have suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

F. FAILURE TO MAINTAIN RECORDS AND PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Cal. Labor Code §226; IWC Wage Order No. 9)

Defendant intentionally and knowingly provided Plaintiff and other members of the Class with weekly itemized wage statements containing inaccurate information regarding the wages earned by Plaintiff and members of the Class in that the payments owed to Plaintiff and the members of the Class for overtime compensation, minimum wages, meal/rest periods not afforded, reporting time pay, sick pay, were not included in gross wages earned by Plaintiff and members of the Class.

Plaintiff and members of the Class were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to overtime compensation, minimum wages, pay for meal/rest periods not provided, reporting time pay, sick pay, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

G. FAILURE TO REIMBURSE BUSINESS EXPENSES
(Cal. Labor Code §2802)

Defendant was aware that Plaintiff and Class members were using their personal cell phones and purchasing gloves and masks, but failed to indemnify Plaintiff and Class members for all their business-related expenses, in accordance with Labor Code §2802. Plaintiff is informed and believes and thereon alleges that at all relevant times, Defendant maintained a practice of not reimbursing Plaintiff and Class Members for their work-related expenses that they incurred in using their personal cell phones and purchasing gloves and masks.

Plaintiff and Class Members suffered damages in an amount, subject to proof, to the extent they were not reimbursed for all of their business-related expenses incurred in the discharge of their duties. An employer may never impose a financial burden on employees, with respect to business-related expenses, which would reduce the employees' wage rate below the minimum wage.

H. REPORTING TIME PAY
(Wage Order No. 9)

Plaintiff and Class members were required to always be on-call or standby 24/7. Defendant did not pay Plaintiff and Class members for their on call-time, while they waited for work. Defendant's policy was to pay Plaintiff and Class members only if they came in to work their shifts, but not for phone calls or other on-call duties. When Plaintiff and Class members were required to work, they were required to show up within 2 hours minutes of being called. Defendant failed to pay Plaintiff and Class members reporting time pay.

Plaintiffs and Class members suffered damages in an amount, subject to proof, to the extent they were not provided and paid reporting time pay.

I. FAILURE TO PROPERLY PAY SICK PAY WAGES
(Cal. Labor Code §§201-204, 218, 218.5, 233, 245, 246 et seq.)

Defendant acted intentionally and with deliberate disregard to the rights of Plaintiff and members of the Class by failing to pay proper sick pay wages.

Plaintiff and Class members were damaged by these failures because, among other things, the failures led them to believe that they were not entitled to sick pay, even though they were so entitled and these failures hindered them from determining the amounts of wages owed to them.

J. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS
(Cal. Labor Code §1198.5, IWC Wage Order No. 9)

On or about October 1, 2024, Plaintiff's counsel issued a written request to you for copies of his personnel records. You have failed and refused to permit Plaintiff to have access to copies of his records.

As a result of your failure and refusal to permit Plaintiff to have full access to his records, Plaintiff will seek injunctive relief and recovery of statutory penalties.

K. UNFAIR COMPETITION
(Cal. Bus. & Prof. Code §§17200 et seq.)

Defendant, through the unfair and unlawful business practices as described herein, has obtained valuable property, money and services from the Plaintiff and the Class and has deprived them of valuable rights and benefits guaranteed by law all to the detriment of Plaintiff and the Class. All the acts described are violations of, among other things, the Labor Code and applicable Industrial Commission Wage Orders, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, and

unscrupulous, and thereby constitute unfair and unlawful business practices in violation of Business & Professions Code §§ 17200 *et seq.*

Plaintiff and the Class are entitled to, and are, seeking such relief as may be necessary to restore to them the money and property which Defendant has acquired, or of which Plaintiff and the Class have been deprived by means of the above-described unfair and unlawful business practices.

Moreover, Plaintiff, and all other similarly aggrieved California employees, intend to seek all penalties for the violations described above. Moreover, Plaintiff also intends to recover the actual wages owed to employees under the Labor Code sections that authorize such recovery, including but not limited to Labor Code §558.

III. CONCLUSION

Please take notice this letter is intended to exhaust the pre-litigation requirements set forth under California Labor Code, §§2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of §2699, *et seq.*, by seeking redress in court. (Labor Code § 2699.3(a)(1).) The LWDA must then notify the employer and the employee within 33 calendar days regarding whether it intends to investigate the alleged violation. (Labor Code, §2699.3(a)(2)(B).) If the LWDA advises that it will not investigate, or if no notice is provided within 33 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code, §2699. (Labor Code, §2699.3(a)(2)(A).) It is the intention of this office to file a civil complaint and to bring the appropriate claims under Labor Code, §2699, should your office not address these matters within the proscribed time.

We write this letter subject to and without waiver of our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Sincerely,

LIPELES LAW GROUP, APC



Kevin A. Lipeles, Esq.