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Submitted at https://www.dir.ca.gov with $75 filing fee

PAGA Administrator
California Labor and Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: Colletta Carpet Cleaning and Janitorial Service, Inc., and Araya Construction, Inc. (collectively, the "Employer")

NOTICE OF LABOR CODE VIOLATIONS UNDER LABOR CODE § 2699.3

To: PAGA Administrator, California Labor and Workforce Development Agency, and the Employer

From: Samuel A. Florez (the "Employee"), who was subjected to the wage and hour practices set forth below

The Employee, by way of the above-named counsel, submits this Notice, under and in compliance with the requirements of California Labor Code § 2699.3(a)/(c), and alleges the facts and theories to support the alleged violations as follows:

During the applicable time period each Employer was and is a member of and/or engaged in a joint venture, partnership and common enterprise, and was acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise. Further, during this time period, each Employer employed the Employee and all other similarly situated aggrieved employees as non-exempt employees and utilized consistent policies and procedures regarding the Employee and all such other aggrieved employees, as follows:

First, the Employer failed to pay all wages to the Employee and other aggrieved employees due to the Employer's time rounding policy. The Employer could and did capture actual time worked but ignored employees' actual time punches and instead rounded their time. This time-rounding policy (combined with the fact that employees often arrived early and/or worked late) resulted in a disproportionate impact that does not average out over a period of time. This policy results in the failure to compensate for all time actually worked by the Employee and other aggrieved employees. Accordingly, the Employer failed to pay all straight time, minimum, and/or overtime wages due for the time the Employee and other aggrieved employees were subject to the Employer's control, in violation of Labor Code §§ 510, 1194, 1197, and 1198 and the applicable Industrial Wage Order, and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Second, the Employee and other aggrieved employees performed work for the Employer and sometimes worked over eight hours in a day and/or 40 hours in a week. However, the Employer failed to always pay the Employee and other aggrieved employees for all overtime hours worked at the appropriate overtime pay rate. As such, the Employer violated Labor Code §§ 510, 1194, 1197, and/or 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Third, the Employer paid the Employee and other aggrieved employees certain forms of non-discretionary pay, including but not limited to bonuses. However, the Employer did not include all forms of remuneration in the overtime pay rate when the Employee and other aggrieved employees worked overtime. As such, the Employer violated Labor Code §§ 510, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Fourth, the Employee and other aggrieved employees were sometimes required to report to work for early morning company meetings and then sent home, but when doing so, were sometimes paid for less than half the usual or scheduled day's work at each such employee's regular rate of pay, in violation of the applicable Industrial Wage Order § 5(A)/(B) and Labor Code § 1198. As such, the Employer owes penalties under Labor Code §§ 2699(a)/(f), 1197.1, and/or 558.

Fifth, the Employer failed to timely provide all legally compliant meal breaks (including second meal breaks) to the Employee and other aggrieved employees, because the Employer failed to relinquish all control and/or because meal breaks were missed, interrupted, short and/or late. The Employee and other aggrieved employees routinely worked over five hours but did not always get lawful full thirty-minute uninterrupted meal breaks within the first five hours of their shifts. Further, they sometimes worked over ten and/or twelve hours but were not timely provided a legally compliant second meal break. The Employer did not always pay a meal period penalty for these violations. As such, the Employer violated Labor Code §§ 226.7, 512 and 516 and the applicable Industrial Wage Order ¶ 11 and owes penalties under Labor Code §§ 2699(f) and/or 558.

Additionally, as stated above, regarding the Employee and other aggrieved employees, the Employer utilized a time rounding policy, including for meal periods, that ignored said employees' actual meal period time punches and instead rounded their meal period time. However, under *Donahue v. AMN Services, LLC* (2021) No. S253677, with respect to recording the time for meal periods, "employers cannot engage in the practice of rounding time punches." In addition, because the Employer rounded meal period time for the Employee and other aggrieved employees, the Employer failed to pay all straight time wages, minimum wages and/or overtime wages due for the meal period time that was stolen due to the Employer's meal-period-time-rounding-policies. Because the Employer did in fact engage in the practice of rounding time punches with regard to the Employee and other aggrieved employees, the Employer violated Labor Code §§ 204, 226.7, 510, 512, 516, 1194, 1197, 1198 and the applicable Industrial Wage Order and owes penalties under Labor Code §§ 2699(f), 1197.1, and/or 558.

Sixth, the Employer failed to always authorize and permit the Employee and other aggrieved employees with paid third rest breaks, as the Employee and other aggrieved employees did not always get their full ten-minute uninterrupted third rest breaks for the third four hour period worked or major fraction thereof, and as such, were not always authorized and permitted legally compliant third rest breaks. The Employer did not pay a rest period penalty for these third rest break violations. As such, the Employer violated Labor Code §§ 226.7 and 516 and the applicable Industrial Wage Order ¶ 12(A)/(B) and owes rest period wages and penalties under Labor Code §§ 2699(f) and/or 558.

Seventh, the Employee and other aggrieved employees incurred expenses while performing reasonable and necessary work-related duties, including but not limited to the use of their personal mobile devices. The Employer failed to reimburse for these work-related expenses. As such, the Employer violated Labor Code § 2802 by failing to reimburse the Employee and other aggrieved employees for all business expenses reasonably incurred in the course of their required work duties and owes penalties under Labor Code § 2699(f).

Eighth, also regarding waiting time penalties, because the Employer failed to pay all wages as set forth above, formerly-employed aggrieved employees are entitled to thirty days of wages at their regular rate of pay for the Employer's failure to pay all wages due upon separation of employment. The Employer's failure to timely pay final wages to formerly-employed aggrieved employees was willful in that the Employer adopted policies and/or practices that were incompatible with the Labor Code. Because the Employer failed to pay all wages as set forth above, the Employer derivatively violated Labor Code §§ 201-202 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Ninth, and finally, also regarding waiting time penalties, in addition to the derivative violations of Labor Code § 203 set forth above, the Employer did not timely pay the Employee and other separated aggrieved employees all wages due and owing in a timely manner. For example, the Employee resigned on May 2, 2024, so his final wages were immediately due and owing. However, the Employer willfully failed to pay the Employee his final wages until May 11, 2022. Therefore, the Employer violated Labor Code §§ 201-203 and owes penalties under Labor Code §§ 2699(f) and/or 201-203.

Under Labor Code § 2699.3(a)(2)(A), please advise within 65 calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Further, under Labor Code § 2699.3(c)(2)(A), the Employer may cure the alleged violations within 33 calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

In addition, this letter clearly sets forth the Employee's grievances and proposed remedies, under the Labor Code, PAGA, and otherwise, as set forth above. The Employee would like to engage in reasonable efforts to settle this dispute before filing a civil action against the Employer. The Employee gives the Employer the opportunity, prior to the expiration of the deadline for the LWDA to investigate, to meet the Employee's demands and settle this dispute.

We understand that if we do not receive a response within 65 calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from the Employer that the alleged violations are cured, and/or if the alleged violations are not cured, then the Employee may immediately thereafter commence a civil action against the Employer under Labor Code § 2699.

Thank you for your consideration.

Regards,

Gregg Lander

Emil Davtyan
Gregg Lander
Vanessa M. Ruggles

cc: (via Certified Mail)

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cc: (via Regular Mail)

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