

BRADLEY/GROMBACHER LLP
CLASS ACTIONS, MASS TORTS & CATASTROPHIC INJURIES

Marcus J. Bradley
Kiley L. Grombacher
Lirit A. King
Robert N. Fisher

March 2, 2020

Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
*Filed Online and Courtesy Copy Delivered
via Certified Mail with \$75 Check*

Re: Written Notice – Private Attorney General Act (“PAGA”) –
California Labor Code § 2698 et seq.
*Paula Davidson v. Levy Premium Foodservice Limited Partnership and Compass
Group USA Inc.*

PAGA Administrator:

Notice is hereby provided that, pursuant to California *Labor Code* § 2699.3, Paula Davidson (“Employee”) contends that, Levy Premium Foodservice Limited Partnership (“Levy”) and Compass Group USA, Inc. (“Compass”), (collectively “Employers”), have violated, and continue to violate, provisions of the California *Labor Code* and wage orders promulgated by the Industrial Welfare Commission (“IWC Wage Orders”), including, but not limited to, California *Labor Code* §§ 200, 201-203, 226, 351, 1194, 1194.2, and the applicable wage orders.

In accordance with the required notice under California *Labor Code* § 2699.3 of the Private Attorney General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”).

Sharon Peskett is a full-time, non-exempt, hourly employee of Levy from approximately January, 2016 to the present. Ms. Peskett was hired by Levy and worked at Dodger Stadium as a food runner from 2016 to July, 2019 and has worked at the Rose Bowl from 2019 to the Present as a suite attendant in the

www.bradleygrombacher.com

Bradley/Grombacher LLP
31365 Oak Crest Drive
Suite 240
Westlake Village CA 91361
T: (805) 270-7100
F: (805) 270-7589

luxury suites. Both Dodger Stadium and the Rose Bowl are sports arenas that also serve as venues for music concerts, major sport events, and other large- scale events in the in the Los Angeles metropolitan area.

Levy is an Illinois limited partnership that does business in California. Levy's line of business includes the retail sale of prepared food and drinks for on-premise consumption at arenas, stadiums, and large venues. Levy is a subsidiary of Compass Group USA, Inc.

Compass Group USA, Inc., is a Delaware corporation that does business in California. Compass is a leading foodservice and support services company that encompasses several foodservices companies, including Levy.

Employee and other aggrieved employees seek unpaid wages, penalties and other compensation from Employers for the relevant time period because Employers improperly:

1. Failed to pay all wages to Employee and other aggrieved employees (California *Labor Code* §§ 1194, 1197 & 1198 and IWC Wage Order No. 5);
2. Failed to pay Employee and other aggrieved employees all final wages in a timely manner (California *Labor Code* §§201-203).
3. Failed to provide Employee and other aggrieved employees with proper wage statements (California *Labor Code* § 226(a); and
4. Failed to reimburse Employee and other aggrieved employees for incurred expenses (California *Labor Code* § 2802).
5. Failed to pay non-managerial employees gratuities incurred as part of mandatory service fees (California *Labor Code* § 351).

Employee is an "aggrieved employee" as defined in California *Labor Code* § 2699, subdivision (a) and brings this action on behalf of herself and all other aggrieved employees of Employers. Employee, also on behalf of herself and all other aggrieved employees, seeks penalties under PAGA for Employers' violations.

Below please find the relevant facts and legal theories to support the aforementioned violations. In addition, a copy of the Complaint which further details the facts and theories of liability is attached hereto and incorporated by reference.

Failure to Pay All Wages

Levy violated California *Labor Code* §§ 204, 1194, 1194.2, 1197, 1197.1, and IWC Wage Order No.5, by failing to pay Employee and other aggrieved employees at least the minimum wage for all hours worked as detailed below. As a matter of policy and/or practice, Levy failed to compensate Employee and other aggrieved employees for all work hours and thus, failed to pay

minimum wage for each hour Employee and other aggrieved employees worked in violation of California law.

Defendants' Routine Policy of Rounding

Levy rounds Employee and other aggrieved employees' time worked to their detriment. Levy uses a timekeeping software known as 'Kronos,' to record its employee work hours. Employees are required to punch into the system at the beginning and end of their shifts, as well as for meal breaks. A Kronos punch shows the actual time (to the minute) when the employee punched into the system. During the relevant times, Levy calculated an employee's pay based on his or her Kronos punch times subject to a rounding policy where in and out punches are rounded up or down to the nearest tenth of an hour. E.g. if an employee punches in at 2:57, it would round up to 3:00 and if an employee punched out at 7:03, it would round down to 7:00.

Levy's routine policy of rounding all hours deprived employees of the compensation they should have received for all actual hours worked.

Employee alleges that she had uneven and non-rounded punches, but end results are the time being rounded by Levy. As a result, Levy has failed and refused to compensate Employee and other aggrieved employees all wages due to them for actual hours worked, and are in violation of California *Labor Code* § 1194. Defendant owes each of their hourly employees for the unpaid time each day.

Security Checks

Pursuant to a uniform policy originated by Employers, all hourly employees are subject to personal bag searches. Hourly employees were and are required to wait in line and be searched for potential or possible contraband. Employee and other aggrieved employees were and are required to wait in line for security checks each day at the start of their shift with the rest of the public. This daily uncompensated waiting time during security checks was done in order to undergo searches for possible contraband. Because such screening is designed to prevent and deter employee contraband, a concern that stems from the nature of the employee's work, the security checks and consequential wait time are necessary to the employee's primary work and done solely for Employers' benefit.

Employee also alleges that even if employees arrived over an hour prior to the start of a shift to ensure they made it through security, Kronos, the timekeeping system would not register any punches prior to ten (10) minutes prior to the start of a shift. Thus, the time waiting in the security line was uncompensated by the Employers.

Time Spent "off the clock"

Employee alleges that after each shift she was required to clock-out, however was to remain on the premises for up to thirty (30) minutes or longer to receive her tips. The tips were given to her by management; however, Employee was always told to clock-out before receiving her tips. This is time that should have been compensated by Employers.

Accordingly, Employee now seeks civil penalties for these *Labor Code* violations that Employers have committed against her and other aggrieved employees.

Wage Statements

Labor Code § 226(a) provides that, (a) Every employer shall, semimonthly or 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, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission (5) net wages earned...(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..."

Employers failed to comply with California *Labor Code* §226(a) because the earnings statements provided by Levy to Employee and other aggrieved employees do not accurately depict the total number of hours worked, nor do the statements specify the correct gross wages earned by employee and other aggrieved employees. Thus, Employers violated California *Labor Code* §226(a).

Employers failed to accurately record the wages due to Employee and other aggrieved employees specifically including, but not limited to, by failing to record all hours worked and by failing to record wages due for time worked "off-the-clock."

Failure to Reimburse Expenses

Pursuant to Employers' corporate policy, practice and procedure, Employee and other aggrieved employees were required to incur expenses as a direct consequence of obeying the directions of Employers. This specifically includes, but is not limited to, the mandatory purchase of shoes specified by Employers. This resulted in a kickback to Employers because Employee and other aggrieved employees put their own money toward the Employers' benefit and thus, resulted in wages below the minimum wage.

Employers failed and refused, pursuant to corporate policy, practice and procedure, to reimburse Employee and other aggrieved employees for such expenditures as required by California *Labor Code* §2802.

Improper Service Charge

Employee has worked at the Rose Bowl since 2019 working for the Levy Restaurant Group as a suite attendant, where she acts as a food server in luxury suites. As a part of all bills in such suites, there is a twenty percent "service charge" added to each bill. Despite this ambiguous name, employees receive no tipping from the service charge and Ms. Peskett and other employees frequently are not "tipped" due to customers misunderstanding and assumption that servers' tip is

LWDA – PAGA Notice

Re: Sharon Peskett v. Levy Premium Foodservice Limited Partnership and Compass Group USA Inc.

Monday, March 2, 2020

Page 5

included in the “service charge”. California *Labor Code* § 351 prohibits employers from not remitting non-managerial service employees the total gratuities that are charged to customers. This has caused Ms. Peskett and other employees’ significant injury, and the loss of gratuities to which they are entitled. Ms. Peskett alleges that the Levy Group knows that customers wrongfully assume this is a gratuity but continue to include it in receipts with no clarification as to what such additional surcharges are for.

Conclusion

Employee respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy of this letter is being sent via certified mail to Levy and Compass. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Very truly yours,

BRADLEY/GROMBACHER, LLP



Lirit A. King, Esq.

Enclosures – as stated above.

cc: LEVY PREMIUM FOODSERVICE LIMITED PARTNERSHIP
980 N Michigan Ave Ste 400
Chicago, IL 60611

cc: COMPASS GROUP USA, INC.
TAX DEPT. 2400 Yorkmont Road
Charlotte NC 28217