



December 18, 2024

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency
Private Attorney General Act (PAGA) – Filing

VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Levy Premium Foodservice Limited Partnership
980 N Michigan Ave Ste 400
Chicago, IL 60611

Compass Group USA, Inc.
2710 Gateway Oaks Drive
Sacramento, CA 95833

Re: Notice by Demorris Russell on Behalf of Himself and all Other Aggrieved California Employees of Levy Premium Foodservice Limited Partnership and Compass Group USA Inc. as an individual and a Representative of the State of California

Dear Labor and Workforce Development Agency, Levy Premium Foodservice Limited Partnership and Compass Group USA Inc.:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code section 2698, *et seq.*, Demorris Russell (“Mr. Russell” or “Claimant”) intends to bring a civil action against his former employer Levy Premium Foodservice Limited Partnership and Compass Group USA Inc. (collectively “the Employers”), individually and on behalf of all other aggrieved employees. This letter serves as Claimant’s written notice pursuant to Labor Code section 2699.3(a)(1) providing the Labor and Workforce Development Agency (“LWDA”) the opportunity to investigate the alleged claims contained herein of the specific provisions of the Labor Code allegedly violated by the Employer and the facts and theories in support of said allegations. This information contained herein is based on currently possessed information and belief.

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative civil action for PAGA penalties on behalf of himself and all other aggrieved employees of the Employer and shall seek civil penalties under the PAGA. A copy of this Notice is being sent to the Employer by certified mail at the address above.

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Identity of “Employees”

Claimant intends to pursue PAGA civil penalties on his own behalf and on the behalf of other current and former employees of the entities/individual referenced below who performed non-exempt work for said entities/individual and were either: 1) classified as a non-exempt employee or 2) should have been classified as a non-exempt employee. Said employees are limited to employees performing work for said entities/individuals at any time during one (1) year prior to the date of this PAGA Notice letter and continuing until the unlawful employment practices are stopped and/or a judgment is entered. Said employees are collectively hereinafter referred to as "Aggrieved Employees." The names of Aggrieved Employees (other than Claimant) are contained within the personnel records of the Employer.

Identity and Capacity of Employers/Joint Employers

Claimant intends to pursue a PAGA action against the Employers and their parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as "Employer" as well). Claimant will seek to hold all owners, directors, officers and managing agents of the Employers, personally liable for said violations to the extent permitted under Labor Code §558 and/or Labor Code §558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Claimant will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that the Employer and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Aggrieved Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Aggrieved Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Aggrieved Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Aggrieved Employees.

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Violations/Supporting Facts and Theories

The Employers operate within the State of California and have employed/jointly employed Employees (including Claimant) to perform work and services in furtherance of their business and joint enterprise interests.

Claimant currently works for the Employers as a bartender/server. During his employment, Claimant and other Aggrieved Employees have not been paid all wages, including tips/gratuities, and minimum and overtime wages owed to Claimant and other Aggrieved Employees.

At all relevant times at least one year prior to the date of this Notice, the Employers subjected Claimant and other Aggrieved Employees to policies and practices caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties on behalf of all Aggrieved Employees and the State of California based on the alleged violations of the Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a). Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the Labor Code and applicable IWC Wage Order on behalf of himself and all other non-exempt aggrieved employees of Employer:

1. Failure to Pay Wages (Tips/Gratuities);
2. Failure to Pay Minimum and Overtime Wages;
3. Failure to Reimburse Business Expenses;
4. Failure to Provide Accurate Itemized Wage Statements; and
5. Failure to Maintain Accurate Records.

The violations of the Employer, thus include, the following:

Failure to Pay Wages (Tips/Gratuities)

Claimant works for the Employers as a bartender/server. Claimant's and other Aggrieved Employees' tips and gratuities have been improperly handled in violation of Labor Code §351. Tips are being withheld from employees, including Claimant and other Aggrieved Employees when the employees are required to use the Game Face ID system at certain events held at the Intuit Dome. Claimant and other Aggrieved Employees complained about this issue and were paid a flat \$100 per event to cover tips as opposed to the actual amount of tips received. However, when Claimant and other Aggrieved Employees use the Square system for customer payments, they are paid their accurate tips. It is when Claimant and other Aggrieved Employees are required to use the Game Face ID payment system that he does not receive all tips/gratuities in violation of Labor Code §351, resulting in an underpayment of wages in violation of California law.

Furthermore, the Employers' policy prohibiting employees from making any notes or record any financial transactions during their shift effectively prevents workers from maintaining their own records of earned tips, potentially violating their rights to verify and protect their gratuity earnings. The systematic nature of these practices, combined with the employer's attempt to

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normalize tip reduction through official communications, suggests a deliberate practice of tip withholding that affects multiple employees and violates California's robust tip protection laws.

Accordingly, Claimant will pursue *civil penalties* under the PAGA on behalf of all Aggrieved Employees, including recovery of attorney's fees, costs, and civil penalties to the extent allowed by law.

Failure to Pay All Wages (Overtime and Minimum Wages)

The Employer violated Labor Code sections 218, 500, 510, 1194, 1197, 1198, and the applicable Industrial Welfare Commission Wage Order, sections 3 and 4, by failing to pay Claimant and other Aggrieved Employees at least the minimum wage, and at times, the overtime wage required under the law, including hours worked off-the-clock walking from a designated parking location and undergoing mandatory security screenings.

Claimant and other Aggrieved Employees are required to park at a specific location of the parking lot and must typically walk at least a quarter of a mile to arrive at the Intuit Dome arena. Once arriving at the Intuit Dome, Claimant and other Aggrieved Employees are required to go through a metal detector prior to clocking in. The time spent walking from the parking lot and undergoing mandatory security checks is not paid and is off-the-clock work. The Employers have control over where Claimant and other Aggrieved Employees must park and the walking route he must take to arrive at the Intuit Dome. The walk to Intuit Dome from the designated parking location can take between 30-45 minutes and Claimant and other Aggrieved Employees are expressly instructed by the Employers to allow 30 minutes for parking and check-in to ensure they have enough time to get to their assignments. Due to the strict requirements and limitations placed upon Claimant and other Aggrieved Employees by the Employers, the amount of time it takes to walk from the parking location to the Employer's place of business is compensable time and should be compensated. The Employers also specifically instructed Claimant and other Aggrieved Employees not to clock in on their cell phones until arriving at the Intuit Dome and going through the mandatory security screening.

Additionally, at times, the Employers required Claimant and other Aggrieved Employees to immediately clock out for a break upon arriving at work without being paid for the time on break and essentially forcing Claimant and other Aggrieved Employees to take a premature unpaid, lunch break.

Furthermore, under California law, employers are obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer and includes all the time the employee is suffered or permitted to work, whether required to do so. The Employers failed to pay any wages, including overtime and minimum wages for work performed off-the-clock and while under the control of the Employers.

Accordingly, Claimant will pursue *civil penalties* under the PAGA on behalf of all Aggrieved Employees, including recovery of attorney's fees, costs, and civil penalties to the extent allowed by law.

Failure to Reimburse All Reasonable and Necessary Business-Related Expenses

Labor Code §2802(a) provides that “[a]n employer shall indemnify his or her employee 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code §2802(c) states that “[f]or purposes of [2802], the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Labor Code §2802 prohibits employers, such as Employers, from shifting their cost of doing business onto the employee. Labor Code §2802 states that employers must “indemnify” an employee 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.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Labor Code section 2804.

The Employers failed to comply with Labor Code §2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other Aggrieved Employees, for necessary business-related expenses incurred in direct consequence of the discharge of their duties. Claimant and other Aggrieved Employees were required to use personal cell phones for business-related purposes without receiving any reimbursement. Claimant and other Aggrieved Employees incurred transportation costs for parking at their work location, without receiving reimbursement for this work-related expense.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other Aggrieved Employees based on the alleged violations of the Labor Code and applicable IWC Wage Orders.

Failure to Provide Accurate Itemized Wage Statements

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an 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; (3)

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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 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 (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.

Furthermore, Labor Code § 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement.”

Labor Code § 226.3 imposes an additional civil penalty on the Employers of \$250.00 per employee per violation of Labor Code § 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimants are entitled to an award of costs and reasonable attorney’s fees.

The Employers have failed to provide accurate itemized wage statements to Claimant and other Aggrieved Employees insofar as the wage statements provided do not accurately reflect all hours worked and all wages due and owing, including tips/gratuities, in violation of Labor Code §226.

Accordingly, Claimant will pursue *civil penalties* under the PAGA on behalf of all Aggrieved Employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law.

Failure to Maintain Accurate Records

Labor Code §1174(d) requires every person, including Employers, employing labor in the state to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

Labor Code §1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of §1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of §1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

Section 7(A) of the applicable IWC Wage Order provides: “Every employer shall keep accurate information with respect to each employee including the following: . . . (3) time records

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showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.” Employers failed to accurately record the hours worked and meal periods for Claimant and other non-exempt aggrieved employees.

The Employers failed to keep accurate records due in part to the discrepancies between POS-generated tips and actual payouts and underpayment of wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of himself and other Aggrieved Employees based on the alleged violations of the Labor Code and applicable IWC Wage Orders.

Civil Penalties for Violation of the Labor Code and IWC Wage Orders

Labor Code §558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code §558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Labor Code §558.1(b) expressly defines “other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code §1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employers violated the IWC Wage Order regulating the hours and days of work, Labor Code §§510, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, Employers are liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

Accordingly, Claimant will pursue *civil penalties* under the PAGA on behalf of himself and other Aggrieved Employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law.

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Duties of Employer

Labor Code §1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employers violated this requirement by their failure to accurately record employee hours and wages owed for meal and rest period premiums and reporting time pay. Labor Code §1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per non-exempt aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code §1174(d). Furthermore, Claimant and all other aggrieved current and former non-exempt employees are entitled to collect 35% of the penalty imposed pursuant to §2699.

The Employers failed to accurately record meal periods and failed to record all accurate wages to be paid, as a result of the Employers' policy of not paying meal and rest period premiums for non-compliant breaks.

Claimant will pursue all remedies on behalf of himself and other non-exempt Aggrieved Employees, including but not limited to non-exempt employees in California, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

Attorneys' Fees, Costs, Interest and Penalties

Labor Code §§218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*, give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code §2699(m), aggrieved employees are entitled to collect 35% of the civil penalty assessment. Accordingly, Employers are liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs because of the Employer's unlawful actions.

Conclusion

If the State of California intends to investigate the matters set forth herein, please inform our offices as soon as possible as prompt administrative action will permit the identified unlawful practices to be rectified in prompt fashion. If the State of California does not send notification of its intent to investigate the alleged violations set forth herein, then pursuant to Labor Code section 2698, *et seq.* (PAGA), Claimant reserves the right to file a PAGA cause of action seeking all available damages, penalties, and remedies as well as attorneys' fees, interest, and costs against Employer, as permitted under the PAGA. Should the State of California require any additional information, please do not hesitate to contact the undersigned.

Sincerely,



Marta Manus, Esq.

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