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February 14, 2020

VIA ONLINE SUBMISSION

PAGA Administrator
Labor & Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED U.S. MAIL/RETURN RECEIPT REQUESTED

Levy Premium Foodservice Limited Partnership
c/o CSC – Lawyers Incorporated Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Compass Group USA, Inc.
c/o CSC – Lawyers Incorporated Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

**Re: Notice Pursuant to Labor Code Section 2699.3(a)
Violations of California Labor Code by Levy Premium Foodservice Limited
Partnership and Compass Group USA, Inc.**

To whom it may concern:

This letter is intended to comply with the requirements of California Labor Code section 2699.3, subdivision (a), with respect to notice of violations of the California Labor Code by Levy Premium Foodservice Limited Partnership and Compass Group USA, Inc. (collectively hereinafter “Levy Restaurants”). This office represents Mitchell Berbera (hereinafter “Plaintiff”) in connection with his claims under the California Labor Code. Unless the Labor and Workforce Development Agency proceeds against Levy Restaurants, Plaintiff intends to seek penalties for violations of the California Labor Code, which are recoverable under California Labor Code sections 2698 *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Plaintiff is seeking penalties on behalf of himself, the State of California, and all current and former employees of Levy Restaurants that have been paid on an hourly basis in California from February 14, 2019 through the date of final disposition of this action. These current and former employees of Levy Restaurants are referred to herein as the “Aggrieved Employees.”

Plaintiff was employed by Levy Restaurants for over ten (10) years before being terminated on or about October 8, 2019. During his employment he worked as an Event Suites Server/Bartender at the Los Angeles Staples Center. The relevant legal claims are as follows:

Violation of Labor Code sections 510, 1194, and 1198

California Labor Code sections 510, 1194, and 1198 require employers to pay employees one and one-half times their regular rate of pay for all hours worked in excess of eight in one workday or forty in one workweek, and two times their regular rate of pay for all hours worked in excess of twelve in one workday. At all times while working for Levy Restaurants, Plaintiff and other Aggrieved Employees working in California were classified as non-exempt from the overtime provisions of Labor Code sections 510 and 1194. Throughout their employment, Plaintiff and other Aggrieved Employees were required to work in excess of eight hours in one workday, forty hours in one workweek, and twelve hours in one workday, but were not paid one and one-half times and two times their regular rate of pay for these hours in violation of Labor Code sections 510 and 1194. Plaintiff and other Aggrieved Employees did not receive one and one-half times their regular rate of pay for all overtime hours worked because Levy Restaurants failed to include all compensation, including but not limited to incentive compensation (e.g. bonuses), when calculating the regular rate of pay for overtime payments. As a result, Levy Restaurants failed to properly calculate Plaintiff and other Aggrieved Employees' regular rates of pay and in turn, did not properly calculate their overtime wages. Additionally, Plaintiff and other Aggrieved Employees' were subject to various hourly wage rates during any one pay period. When Plaintiff and other Aggrieved Employees were subject to various wage rates during a pay period, Levy Restaurants again failed to properly calculate Plaintiff and other Aggrieved Employees' overtime wages since they did not: (1) average the hourly wage rates in effect during the pay period to determine the correct regular rate of pay for overtime or (2) utilize the hourly rate of pay which was in effect at the time the overtime was worked. Levy Restaurants knew, or reasonably should have known, that Plaintiff and other Aggrieved Employees were not properly being paid overtime wages and that it was improperly calculating the regular rate of pay.

Violation of Labor Code sections 226.7 and 512

California Labor Code sections 226.7 and 512 and the applicable IWC Wage Order require employers to provide meal and rest breaks and require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest period is not provided. Plaintiff and other Aggrieved Employees were employed in non-exempt positions and fully entitled to all meal and rest periods to the extent they worked sufficient hours in any given day. Throughout their employment, and in violation of California Labor Code section 226.7, Levy Restaurants failed to provide Plaintiff and other Aggrieved Employees with meal breaks and failed to authorize and permit Plaintiff and other Aggrieved Employees to take all legally-required rest breaks.

Due to the substantial amount of time required to setup private suites and bars at the Staples Center, Plaintiff and other Aggrieved Employees were unable to take meal and/or rest breaks prior to the events they were scheduled to work. When working in the private suites, Plaintiff and other Aggrieved Employees were additionally unable to take meal and/or rest breaks during the events

due to understaffing or how busy the suites got since employees were scheduled to work alone the majority of the time. Plaintiff and other Aggrieved Employees were also never able to take a meal or rest break when they worked at a bar because the bars were extremely busy, understaffed, and the alcohol and money could never be left unattended. Levy Restaurants additionally did not maintain any policy or procedure for relieving an Event Suite Server if he or she was working with a client as the fifth hour of work approached for their meal break or the fourth hour of work for their rest break.

Further, Levy Restaurants failed to properly compensate Plaintiff and other Aggrieved Employees for their failure to provide meal breaks or to authorize and permit rest breaks, despite time records indicating that the missed meal and rest breaks were involuntary. If Levy Restaurants elected to issue one hour of additional pay for a missed break, Levy Restaurants paid Plaintiff and other Aggrieved Employees for one hour of pay at their straight pay, not at their regular rate of pay (e.g. including earned incentive compensation and various wage rates). As such, Levy Restaurants failed to properly compensate Plaintiff and other Aggrieved Employees for their failure to provide breaks because they did not compensate Plaintiff and other Aggrieved Employees with one additional hour of pay at their *regular rate of pay* for each workday that a legally required break was not provided.

Violation of Labor Code sections 2800 and 2802

California Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. Plaintiff and other Aggrieved Employees incurred necessary business-related expenses and costs that were not reimbursed by Levy Restaurants. Plaintiff and other Aggrieved Employees used their personal cell phones for business purposes. Specifically, Plaintiff and other Aggrieved Employees used their personal cell phones to contact managers in order to place food and/or alcohol orders for customers. Plaintiff and other Aggrieved Employees additionally used their personal cell phones to contact their managers if they needed assistance during their shift. Levy Restaurants was aware that Plaintiff and other Aggrieved Employees used their personal cell phones for business purposes and did not reimburse them for this necessary expenditure in violation of California Labor Code section 2802.

Violation of Labor Code section 227.3

Under California law, vacation pay is another form of wages which vests as it is earned. Under California Labor Code section 227.3, upon separation of employment, all earned and unused vacation must be paid to the employee at the final rate of pay. Levy Restaurants did not provide Plaintiff and other Aggrieved Employees with their vested vacation wages upon separation of employment. For example, at the time of Plaintiff's termination, he had 45.02 hours of unused vested vacation wages for which he was never paid. As a result, Levy Restaurants failed to pay Plaintiff and other Aggrieved Employees their vested vacation wages at their final rate of pay when their employment ended.

Violation of Labor Code sections 201-204

California Labor Code sections 201 through 204 require employers to pay employees all wages due within a certain period of time. Levy Restaurants willfully failed to pay Plaintiff and other Aggrieved Employees all of their wages due within the time periods prescribed by California Labor Code sections 201 through 202. For example, while Plaintiff's employment was terminated on October 8, 2019, he did not receive his last earnings statement and pay check until November 1, 2019. Additionally, Plaintiff and other Aggrieved Employees are entitled to compensation for all forms of wages earned, including, but not limited to, compensation for all overtime and vested vacation wages. However, *to date*, Plaintiff and other Aggrieved Employees have not received such compensation.

Violation of Labor Code sections 226(a) and 1174

California Labor Code section 226, subdivision (a), requires employers to make, keep, and provide true accurate, and complete employment records. In addition, Labor Code section 1174 and section 7 of the applicable IWC Wage Order require employers to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed and payroll records showing the hours worked daily by and the wages paid to its employees. These Labor Code sections apply to Plaintiff and other Aggrieved Employees. Levy Restaurants has created a uniform practice of knowingly and intentionally failing to comply with California Labor Code section 1174. Additionally, throughout their employment, Levy Restaurants did not provide Plaintiff and other Aggrieved Employees with properly itemized wage statements. The wage statements they received from Levy Restaurants were in violation of Labor Code section 226, subdivision (a). The violations include, without limitation, the failure to furnish itemized statements that accurately reflected: (1) gross wages earned; (2) net wages earned; (3) total hours worked by the employee; (4) the name and address of Compass Group USA, Inc., one of Plaintiff and the other Aggrieved Employees' employers; and, (5) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA. The foregoing is not intended as an exhaustive recitation of the facts. If you have any questions, please contact me at 8383 Wilshire Boulevard, Suite 708, Beverly Hills, California 90211, (310) 855-3270.

Thank you in advance for your attention to this matter. I would appreciate hearing from the Labor and Workforce Development Agency at your earliest convenience.

Very truly yours,



Brittane A. Marksbury
BERENJI LAW FIRM, APC