

January 17, 2022

Via e-Filing System (<https://dir.tfaforms.net>) to the LWDA and Via Certified U.S. Mail to
Goodyear Company

Attn. PAGA Administrator
Natalie Palugyai
California Labor and Workforce Development Agency
1515 Clay Street, Suite. 801
Oakland, CA 94612

NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE SECTION 2699.3

TO: The California Labor and Workforce Development Agency, The Goodyear
Tire and Rubber Company.

FROM: Luis Franco

Dear Ms. Palugyai,

This office represents Luis Franco (“Franco” or “Claimant”) regarding his wage-and-hour claims related to his employment with The Goodyear Tire and Rubber Company (“Goodyear Company”):

- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees’ *regular rate of compensation* for each workday that the meal period was not provided. Specifically, Goodyear Company failed to include into meal break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Meal break premiums cannot be paid at an employee’s base hourly rate. Goodyear Company have had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.
- Goodyear Company failed to pay Mr. Franco and Other Aggrieved Employees one hour of pay at the employees’ *regular rate of compensation* for each workday that the rest period was not provided. Specifically, Goodyear Company failed to include into rest break premium payments the hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses). Rest break premiums cannot be paid at an employee’s base hourly rate. Goodyear Company have had a consistent policy of paying rest period premiums at the base rate and not the blended rate in Violation of Labor Code §§ 226.7 and 512.

- Goodyear Company failed to apprise Mr. Franco and Other Aggrieved Employees of their rights associated with rest periods and failed to provide compliant rest periods. Goodyear Company maintained a consistent policy of failing to provide Mr. Franco and Other Aggrieved Employees rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof. Mr. Franco and Other Aggrieved Employees were required to work four hours or more without being provided all legally required ten (10) minute rest periods.
- Goodyear Company failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 9-2001 and Labor Code § 226(a) by failing to issue Mr. Franco and Other Aggrieved Employees accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Mr. Franco and Other Aggrieved Employees are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do include the premiums, they are not at the applicable rate.
- Goodyear Company has failed to pay all wages due at the time of termination or resignation to Mr. Franco and Other Aggrieved Employees.

Pursuant to California Labor Code Section 2698. *et. seq.*, Mr. Franco, as an aggrieved employee, intends to bring on behalf of himself and other current or former employees of Goodyear Company a representative action to recover all available civil penalties as provided by California Labor Code sections 558 and 2699 for violations committed during the employment period commencing one year prior to filing of this notice to the present.

I. FACTUAL STATEMENT

Goodyear Company is in business of providing automotive and tire services to the general public in California. It operates a network of service centers in California. Goodyear Company employed Franco Franco as a service advisor from 2009 through October 2, 2021 at two service centers located at 486 N Winchester Blvd, San Jose, California and 3146 Stevens Creek Blvd, San Jose, California. For services provided, Goodyear Company paid Franco hourly compensation ranging from \$16 to \$19 plus nondiscretionary bonus, known as SPIFF.

At all relevant times, as hourly non-exempt employees, Franco and Other Aggrieved Employees were entitled to the benefits and protections of California Labor Code and California Industrial Welfare Commission Occupational Wage Order No. 9-2001 (Title 8 California Code of Regulations §11090 or other applicable Wage Order(s)). As such, they were entitled to meal and rest periods as required by California law, as well as to meal/rest period premiums at their “*regular rate of compensation*” when the opportunity for meal and rest periods was not provided.

During the relevant class period, Franco and Other Aggrieved Employees were eligible for and at times received non-discretionary bonuses, commissions, variable rates, and other items of compensation. For example, Franco and Other Aggrieved Employees were eligible for and received a nondiscretionary bonus SPIFF.

During the relevant class period, Franco and Other Aggrieved Employees were also frequently denied the opportunity to take off-duty, timely, and uninterrupted meal and rest periods in accordance with, and as required by, California law.

During the relevant class period, on many occasions when Franco and Other Aggrieved Employees were denied such opportunities, Goodyear Company paid Franco and Other Aggrieved Employees an amount designated as “CA Meal Premium” on their wage statements. The rate paid for “CA Meal Premium” was always a base hourly rate and not their “regular rate of pay” or “regular rate of compensation.” The table below shows some instances when Goodyear Company failed to include the non-discretionary SPIFF pay into Franco’s regular rate of compensation for non-complaint meal periods:

Pay Period	# of Non-Compliant Meal Periods	Base Hourly Rate	Regular Rate of Pay	Meal Break Premiums Owed
8/02/2019 - 8/08/2019	1	\$19	\$19.38	\$0.38
8/23/2019 - 8/29/2019	2	\$19	\$21.04	\$4.08
10/04/2019-10/10/2019	1	\$19	\$20.62	\$1.62
11/08/2019-11/14/2019	1	\$19	\$20.04	\$1.04
12/27/2019-01/02/2020	1	\$19	\$21.84	\$2.84
1/24/2020-01/30/2020	1	\$19	\$23.82	\$4.82
2/28/2020-03/05/2020	1	\$19	\$20.88	\$1.88

On the occasions when Goodyear Company denied Franco and their other non-exempt employees the opportunity for meal and rest periods, and thus paid them CA Meal or Rest Premium amounts, they did so only at the employees’ base hourly rate as opposed to the “regular rate of compensation” as required by Labor Code section 226.7.¹

During the relevant class period, as a matter of policy and practice, due to a staff shortage, Goodyear Company failed to provide Franco and their other non-exempt employees with an opportunity to take a 10-minute off-duty rest period for each four hours of work or major fraction thereof. As a matter of policy and practice, Goodyear Company neither permitted nor authorized Franco and their other non-exempt employees to take a full off-duty rest period due

¹ *Ferra v. Loews Hollywood Hotel, LLC* (2021) –P.3d— 2021 WL 2965438; *Studley v. Alliance Healthcare Svcs., Inc.* (C.D. Cal. 2012) 2012 WL 12286522 * 4; *Ibarra v. Wells Fargo Bank, N.A.* (C.D. Cal. 2018) 2018 WL 2146380 *4-5.

to a staff shortage, Franco and their other non-exempt employees could not be relieved off all duties for 10-minute rest periods. Goodyear Company failed to pay one additional hour of pay for instances when Franco and their other non-exempt employees could not take a 10-minute rest period for each four hours of work or major fraction thereof per shift.

During the relevant class period, the wage statements furnished by Goodyear Company to their non-exempt California employees violated California Labor Code section 226(a) insofar as they failed to accurately show:

- The gross wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(1);
- The net wages earned (because CA Meal and Rest Premiums were not properly paid) in violation of Labor Code section 226(a)(5); and
- All applicable hourly rates in effect during the pay period in violation of section 226(a)(9).

Goodyear Company were, at all times relevant herein, aware of the requirements of California Labor Code section 226.

Plaintiff's employment with Goodyear Company ended on approximately October 2, 2021. At the time Franco's employment ended, Goodyear Company owed him outstanding earned wages including undisputed wages for the last pay period and underpaid meal and rest period premiums. Those wages remain outstanding.

As a result of the failure to properly calculate meal and rest period premiums, Goodyear Company failed to pay Franco and its other current and former employees whose employment has ended all wages due and owing at the time of separation within the time parameters mandated by Labor Code sections 201 and 202.

II. THEORIES OF LABOR CODE VIOLATIONS AND REMEDIES

A. Failure to Pay Proper Premiums For Non-Compliant Meal and Rest Periods

Labor Code Section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order No. 9-2001 prohibits an employer from "employ [ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Section 12 of IWC Wage Order No. 9-2001 similarly required an employer to authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

IWC Wage Order No. 9-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular *rate of compensation* for each workday that the meal period is not provided. Accordingly, for each day that Plaintiff, the Class Members did not receive compliant meal or rest periods, they were entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order No. 9-2001.

During the relevant class period, Goodyear Company had a common policy and practice of failing to include compensation associated with non-discretionary bonuses to determine Franco's and Other Aggrieved Employees' regular rate of pay for purposes of paying the California meal and rest break premiums for non-complaint breaks. Instead of paying meal/rest period premiums at employees' regular rates, Goodyear Company improperly paid the California meal and rest break premiums at the employee's hourly base rate instead of at their regular rate. Defendant often referred to such premiums by pay codes, including, but not limited to, "CA Meal Premium" on the itemized wage statements. Goodyear Company's policies and practices as alleged above violated *Labor Code* § 226.7.

B. Failure to Provide Rest Periods or Compensation in Lieu Thereof

California Industrial Welfare Commission Wage Order 9-2001 also provides that every employer shall authorize and permit all employees to take off-duty uninterrupted rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare Commission provide that if an employer fails to provide an employee a rest period in accordance with the Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

During the relevant class period, Franco's and Other Aggrieved Employees regularly worked for at least four (4) hours per workday.

During the Class Period, Goodyear Company failed to provide Franco's and Other Aggrieved Employees with adequate and compliant rest periods as required by California law and failed to compensate Franco and Other Aggrieved Employees one additional hour of pay and for each workday that adequate and complaint rest periods with one additional hour of pay (rest break premiums). For example, Franco regularly could not take rest periods because he had to serve Goodyear Company's customer and no other service advisor could relieve him so that he could take an off-duty rest period. If there were any rest periods, such rest periods were less than 10 minutes or often interrupted. Franco observed how other employees also could not take rest breaks due to a staff shortage.

By failing to regularly provide timely, uninterrupted, complete, and unrestricted rest periods, during which Franco's and Other Aggrieved Employees were required to be relieved of all duty, Goodyear Company violated California Labor Code sections 226.7 and Wage Order No. 9-2001 or other applicable Wage Orders of the Industrial Welfare Commission.

C. Failure to Provide Accurate Itemized Wage Statements

Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) 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.

As set forth above, Goodyear Company failed to provide such adequate statements willingly and with full knowledge of their obligations under section 226.

D. Failure to Pay All Wages Due at Separation

Labor Code section 201 provides that an employer is required to provide an employee who is terminated all accrued wages and compensation at the time of termination. Labor Code section 202 similarly requires Goodyear Company to pay their employees all wages due not later than 72 hours after employee's quit notice, unless the employee has given 72 hours previous notice of his intention to quit. Under Labor Code section 203, if an employer willfully fails to pay such wages, for every day that final wages or any part of the final wages remain unpaid, the employer is liable for a penalty equivalent to the employee's daily wage, for a maximum of 30 days.

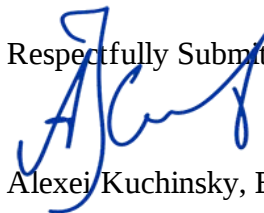
As set forth above, Franco's and Other Aggrieved Employees were not properly paid meal and rest period premium wages at the regular rate of compensation. As a result, Franco's and Other Aggrieved Employees whose employment with Goodyear Company have ended necessarily had outstanding wages due and owing at the time they separated; those wages remain outstanding.

Since the date of Franco's and Other Aggrieved Employees' separation to this date, Franco's and Other Aggrieved Employees have been available and ready to receive the wages due and owing to them. Franco's and Other Aggrieved Employees have not refused to receive any payment from Defendants.

This letter is intended to comply with the requirements of California Labor Code section 2699.3(a). Pursuant to Labor Code section 2699.3(a)(1), as aggrieved employees, the Claimants on behalf of themselves and other current and former employees of Goodyear Company hereby notifies the California Labor and Workforce Development Agency and Goodyear Company of the various Labor Code violations committed by Goodyear Company.

We would appreciate hearing from the LWDA at your earliest convenience.

Respectfully Submitted,



Alexei Kuchinsky, Esq.

VIA CERTIFIED U.S. MAIL TO

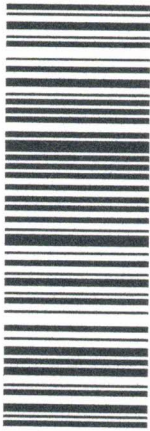
Cert. Mail (7018 3090 0000 8319 6913)

The Goodyear Tire and Rubber Company.
C/O Sarah Ross
Littler Mendelson P.C.
2049 Century Park East, 5th Floor,
Los Angeles, CA 90067-3107



KUCHINSKY LAW OFFICE,
220 Montgomery St. Suite 210
San Francisco, CA 94104

CERTIFIED MAIL®



7018 3090 0000 8319 6920



The Goodyear Tire and Rubber Company
200 INNOVATION WAY LOC 4AS
AKRON OH 44316-0001



\$4.480
US POSTAGE
FIRST-CLASS
FROM 94111
JAN 28 2022
stamps
endicia



062S0011217990