

1 **KINGSLEY & KINGSLEY, APC**
2 ERIC B. KINGSLEY, Esq., Cal. Bar No. 185123
3 eric@kingsleykingsley.com
4 KELSEY M. SZAMET, Esq., Cal. Bar No. 260264
5 kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Telephone: (818) 990-8300
Fax: (818) 990-2903

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 29 2020

CLERK OF THE SUPERIOR COURT
By Carolyn Lemos, Deputy

Attorneys for Plaintiff and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

RIVELINO TAVIRA, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

GENERAL FOUNDRY SERVICE
CORPORATION; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. RG20072299

[Case Assigned for All Purposes to Hon. Brad
Seligman, Dept. 23]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Violation of Labor Code § 226(a)
3. Violation of Business & Professions Code § 17200
4. Penalties Pursuant to Labor Code § 2699, *et seq.*

Filed By Fax

1 Plaintiff RIVELINO TAVIRA, an individual, on behalf of himself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under the Labor Code Private Attorneys General Act of 2004, §2699, et seq. (hereafter
4 “PAGA”), complains of Defendant GENERAL FOUNDRY SERVICE CORPORATION
5 (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, et seq. on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by GENERAL FOUNDRY SERVICE CORPORATION,
12 in the State of California since four (4) years prior to the filing of
13 this action to the present plus any additional time during which the
14 statutes of limitation for the causes of action herein were tolled
15 pursuant to Emergency Rule 9 of the California Rules of Court, the
16 ‘Emergency Rules Relates to COVID-19’. (“Proposed Class”)

17 2. From at least four (4) years prior to the filing of this action continuing to the
18 present,¹ Plaintiff and other Proposed Class members were not properly compensated for
19 overtime at the appropriate rate of pay. Defendant has had a consistent policy of failing to
20 provide proper overtime premium compensation to all Proposed Class members when they work
21 more than eight hours in a day and/or forty hours in a week.

22 3. For at least one (1) year prior to the filing of this action continuing to the present,
23 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 1-
24 2001 and Labor Code § 226(a) by failing to issue Plaintiff and the Proposed Class accurate
25 itemized wage statements that show the address of the legal entity that is the employer and the
26 start and end date for each pay period.

27 ¹ Any limitations period referenced in this complaint is extended pursuant to Emergency Rule
28 9 of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of
Court, adopted effective April 6, 2020, which provides that the statutes of limitation for civil
actions are tolled from April 6, 2020 until 90 days after the Governor of California lifts the
state of emergency related to the COVID-19 pandemic. Any reference to the relevant time
period or statute of limitations is extended into the past by the number of days in which this
tolling was in effect.

4. Plaintiff, on behalf of himself and all Proposed Class members brings this action pursuant to Labor Code §§ 226(a), 510, 1194, and 1199; Wage Order 1-2001; and California Code of Regulations, Title 8, Section 11010, seeking unpaid wages/overtime, accurate itemized wage statements, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

5. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

6. For at least one (1) year prior to the date of the letter sent to the Labor and Workforce Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to PAGA and continuing to the present, Defendant has violated Labor Code §§226(a), 510, 1194, and 1199 giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in his PAGA notice letter (*see* Exhibit “1”), bring this representative action pursuant to Labor Code §2699, *et seq.* seeking penalties for Defendant’s failure to pay overtime and/or wages, provide accurate itemized wage statements, and pay all wages due upon termination.

II.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

8. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Alameda and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class members within the State of California and the county of Alameda.

III.

A. PLAINTIFF

12. Plaintiff and all Proposed Class members, were regularly required to:

b. Work without being provided accurate itemized wage statements that reflect when the employee begins and ends each work period and the address of the legal entity that is the employer.

14. Plaintiff and all current and former employees are aggrieved employees within the meaning of Labor Code §2699, *et seq.* (*see* Labor Code §2699(c).)

15. Defendant GENERAL FOUNDRY SERVICE CORPORATION is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 1390 Business Center Pl San Leandro, CA 94577. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within

1 California. Defendant has done and does business throughout the State of California.

2 16. The true names and capacities, whether individual, corporate, associate, or
3 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
4 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
5 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
6 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
7 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
8 capacities of the Defendants designated hereinafter as DOES when such identities become
9 known.

10 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
12 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
13 Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all
14 respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class
15 members.

16 18. Furthermore, Defendants acted in all respects as the employers or joint employers
17 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
18 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work,
19 or engaged, thereby creating a common law employment relationship, with the Proposed Class.
20 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

21 19. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et*
22 *seq.*

23 **IV.**

24 **FACTUAL BACKGROUND**

25 20. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
26 classified as non-exempt employees by Defendant. Defendant hires employees who work as
27 hourly employees who are paid on an hourly basis.

28 21. Upon information and belief, Plaintiff and the Proposed Class are covered by

1 California Industrial Welfare Commission Occupational Wage Order No. 1-2001 (Title 8 Cal.
2 Code of Regs. § 11010).

3 22. On a regular and consistent basis, Plaintiff and the Proposed Class members were
4 not paid at the proper rate of compensation for all hours worked. Defendant failed to properly
5 compensate overtime premium pay when Plaintiff and the Proposed Class members worked over
6 eight (8) hours in one day and/or forty (40) hours in one week.

7 23. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order
8 1-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
9 statements that reflect when the employee begins and ends each work period and the address of
10 the legal entity that is the employer.

11 **V.**

12 **CLASS ACTION ALLEGATIONS**

13 24. Plaintiff brings this action on behalf of himself and all others similarly situated as
14 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
15 proposed class composed of and defined as follows:

16 All persons who are employed or have been employed as an hourly
17 employee by GENERAL FOUNDRY SERVICE CORPORATION,
18 in the State of California since four (4) years prior to the filing of
19 this action to the present plus any additional time during which the
20 statutes of limitation for the causes of action herein were tolled
pursuant to Emergency Rule 9 of the California Rules of Court, the
‘Emergency Rules Relates to COVID-19’. (“Proposed Class”)

21 25. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
22 amend or modify the class description with greater specificity, by division into subclasses, or by
23 limitation to particular issues.

24 26. This action has been brought and may properly be maintained as a class action
25 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
26 community of interest in the litigation and the Proposed Classes are easily ascertainable.

27 **A. NUMEROSITY**

28 27. The potential members of the Proposed Class as defined are so numerous that

joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed over 50 members of the Proposed Class.

28. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class members. Joinder of all members of the Proposed Class is not practicable.

B. COMMONALITY

29. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class members. These common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

b. Whether Defendant violated Labor Code § 226(a) and Wage Order 1-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11010 by failing to provide accurate itemized wage statements that reflect when the employee begins and ends each work period and the address of the legal entity that is the employer;

c. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

d. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

e. Whether Defendant violated Labor Code §2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

30. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

1 **D. ADEQUACY OF REPRESENTATION**

2 31. Plaintiff will fairly and adequately represent and protect the interests of the
3 members of the proposed Class.

4 32. Counsel who represent Plaintiff and the Proposed Class are competent and
5 experienced in litigating large employment class actions.

6 **E. SUPERIORITY OF CLASS ACTION**

7 33. A class action is superior to other available means for the fair and efficient
8 adjudication of this controversy. Individual joinder of all Proposed Class members is not
9 practicable, and questions of law and fact common to the Proposed Class predominate over any
10 questions affecting only individual members of the Proposed Class. Each member of the
11 Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal
12 policy and/or practice of failing to pay all wages due and failing to provide accurate itemized
13 wage statements.

14 34. Class action treatment will allow those similarly situated persons to litigate their
15 claims in the manner that is most efficient and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
17 action that would preclude its maintenance as a class action.

18 **V.**

19 **FIRST CAUSE OF ACTION**

20 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

21 **FAILURE TO PAY WAGES AND/OR OVERTIME UNDER**

22 **LABOR CODE §§ 510, 1194, AND 1199**

23 35. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
24 by reference all previous paragraphs.

25 36. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
26 employees at the rate of no less than one and one-half times the regular rate of pay for any work
27 in excess of eight hours in one workday and any work in excess of 40 hours in any one
28 workweek.

37. Plaintiff and the Proposed Class were forced to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. Specifically, Plaintiff and the Proposed Class were not properly compensated for overtime premium pay when they were working more than eight (8) hours in one day or forty (40) hours in one week. Instead, Defendant paid any hours over eight (8) hours in one day or forty (40) hours in one week at the regular rate of pay.

38. By their policy of requiring Plaintiff and members of the Proposed Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

39. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class members have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VI.

SECOND CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF

VIOLATION OF LABOR CODE §§ 226(a)

40. Plaintiff, on behalf of himself only, realleges and incorporates by reference all previous paragraphs.

41. California Labor Code § 226(a) requires employers to issue wage statements that accurately contain when the employee begins and ends each work period and the address of the legal entity that is the employer. (Labor Code §§ 226(a)(6) and (8).)

42. Defendant has failed to show the start date for each pay period and include the address of the legal entity that is the on all itemized wage statements issued to Plaintiff and the Proposed Class in violation of Labor Code §§ 226(a)(6) and (8) respectively.

43. Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis.

44. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

VII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

45. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

46. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

47. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

48. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

49. California's wage and hour laws express fundamental public policies. Providing employees with proper wages and compensation are fundamental public policies of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their

1 employees from competitors who lower their costs by failing to comply with minimum labor
2 standards.

3 50. Defendant has violated statutes and public policies as alleged herein. Through the
4 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
6 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
7 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
8 privileges guaranteed to all employees under law.

9 51. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
10 violation of § 17200, *et seq.* of the Business & Professions Code.

11 52. Defendant, by engaging in the conduct herein alleged, either knew or in the
12 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a
13 violation of § 17200, *et seq.* of the Business & Professions Code.

14 53. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
15 others similarly situated have been damaged in a sum as may be proven.

16 Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged
17 above. Pursuant to the Business & Professions Code, this court should make such orders or
18 judgments, including the appointment of a receiver, as may be necessary to prevent the use or
19 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
20 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
21 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
22 proposed Class the money Defendant has unlawfully failed to pay.

23 **VIII.**

24 **FOURTH CAUSE OF ACTION**

25 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

26 54. Plaintiff, on behalf of himself and the aggrieved employees, reallege and
27 incorporate by reference all previous paragraphs.

28 55. As a result of the acts alleged above and specifically incorporated herein, Plaintiff

1 seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor
2 Code §§226(a), 510, 1194, and 1199, which calls for civil penalties.

3 56. For each such penalty, Plaintiff and aggrieved employees are entitled to penalties
4 in an amount to be shown at trial, subject to the following formula:

5 a. \$100 for the initial violation per employee per pay period.

6 b. \$200 for each subsequent violation per employee per pay period.

7 57. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
8 twenty-five percent (25%) to the affected employees.

9 58. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
10 LWDA² and mailed a letter by certified mail to Defendant General Foundry Service
11 Corporation's entity address, which is 1390 Business Center Pl, San Leandro, CA 94577, as
12 proscribed by the Code on August 24, 2020, describing Defendant's conduct in violation of
13 Labor Code §§226(a), 510, 1194, and 1199. (*See* Exhibit "1".)

14 59. Plaintiff also obtained an e-filing confirmation from the LWDA confirming
15 receipt of the notice (*see* Exhibit "2") and a signed certified green return receipt from Defendant
16 establishing that it also received Plaintiff's notice. (*see* Exhibit "3".)

17 60. As no letter evidencing the LWDA's intention to investigate was received by
18 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
19 action as though the LWDA had not chosen to investigate pursuant to Labor Code
20 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
21 Amended Class and Representative Action Complaint immediately.

22 **RELIEF REQUESTED**

23 **WHEREFORE**, Plaintiff prays for the following relief:

24 1. For compensatory damages in the amount of unpaid wages and/or overtime not
25 paid to Plaintiff and each Proposed Class member from at least four (4) years prior to the filing
26

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

of this action to the present as may be proven;

2. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

3. An award of prejudgment and post judgment interest;

4. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime and accurate itemized wage statements pursuant to Labor Code §§ 226(a), 510, 1194, and 1199, and IWC 1-2001;

5. For restitution for unfair competition pursuant to Business & Professions Code § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

6. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor Code §§226(a), 510, 1194, and 1199, and IWC 1-2001.

7. An award providing for payment of costs of suit;

8. An award of attorneys' fees; and

9. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

DATED: October 28, 2020

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet
Attorneys for Plaintiff RIVELINO TAVIRA and the
Proposed Class

EXHIBIT “1”



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.

Your Street Name, Number and Suite/Apt *

16133 Ventura Boulevard

Your Mobile Phone Number

818-990-8300

Your City *

Encino

Your Work Phone Number

Your State *

California

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Rivelino Tavira

Plaintiff/Aggrieved Employee Occupation *

Laborer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Corporation

Employer Name *

General Foundry Service Corporation

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

1390 Business Center Pl

Employer City

San Leandro

Employer State

California



Employer Zip/Postal Code

94577

Employer Industry *

Other



Employer Industry for "Other" *

Manufactured Goods

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

LWDA Letter - ...rporation.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

Julie Lewis

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, August 24, 2020 11:30 AM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

8/24/2020

LWDA Case No. LWDA-CM-803667-20
Law Firm : Kingsley & Kingsley
Plaintiff Name : Rivelino Tavira
Employer: General Foundry Service Corporation

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

KINGSLEY & KINGSLEY

| L A W Y E R S |

August 24, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

GENERAL FOUNDRY SERVICE CORPORATION
1390 Business Center Pl
San Leandro, CA 94577

Re: RIVELINO TAVIRA v. GENERAL FOUNDRY SERVICE CORPORATION
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents RIVELINO TAVIRA (“Plaintiff”) and a proposed group of current and former employees working for GENERAL FOUNDRY SERVICE CORPORATION (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by GENERAL FOUNDRY SERVICE CORPORATION, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Defendant has violated Labor Code §§ 510, 1194, and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one work week. Here, Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all aggrieved employees. Plaintiff and other aggrieved employees were not properly compensated for overtime premium pay for all hours worked over eight (8) hours in one day or forty (40) hours in one week. Instead, Defendant paid Plaintiff and other aggrieved employees for all hours worked over eight (8) hours in one day or forty (40) hours in one week at their regular rate of pay.

Labor Code §226(a)(6) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the inclusive dates of the period for which the employee is paid. Labor Code §226(a)(8) requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing the name and

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address of the legal entity that is the employer. Here, Plaintiff and the aggrieved employees are issued wage statements that do not include the start and end date for each pay period in violation of Labor Code §226(a)(6) and the name and address of the legal entity that is the employer in violation of Labor Code §226(a)(8).

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 226(a), 510, 1194, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/266>
 2. GENERAL FOUNDRY SERVICE CORPORATION via USPS Certified Mail # 7019 2280 0001 9316 0524

EXHIBIT “2”

USPS TRACKING#



9590 9402 3895 8060 7093 75

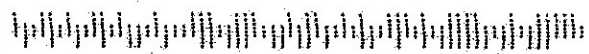
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Gen. Fawcett LW #4



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SERVICE CORPORATION
1390 Business Center Pl
San Leandro, CA 94577



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7019 2280 0001 9316 0524

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X *[Signature]* C19

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J. Stone

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