

DAILY ALJIAN LLP
Newport Beach, California

DAILY ALJIAN LLP

Justin E. D. Daily (State Bar No. 209772)

jd@dallp.com

Reed Aljian (State Bar No. 211010)

ra@dallp.com

Simon Kwak (State Bar No. 297362)

sk@dallp.com

100 Bayview Circle, Suite 5500

Newport Beach, CA 92660

Telephone: 949.861.2524

Facsimile: 949.269.6364

LAW OFFICE OF DANIEL J. HYUN

Daniel J. Hyun (State Bar No. 309184)

dh@danielhyunlaw.com

1100 West Town and Country Road, Suite 1250

Orange, California 92868

Telephone: 949.596.4782

Facsimile: 949.528.2596

Attorneys for Plaintiff FRANCISCO GUARDADO,
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

FRANCISCO GUARDADO, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

MILLENNIUM REINFORCING, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendant(s).

Case No. 20STCV39672

Assigned for All Purposes to:
Hon. Elihu M. Berle
Dept. 6

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004 (CAL. LAB. CODE §§ 2698, ET SEQ.)**

Action Filed: October 14, 2020

**CONFORMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

FEB 08 2021

Sherri R. Carter, Executive Officer/Clerk of Court

BY FAX

1 Plaintiff FRANCISCO GUARDADO (“Plaintiff”), individually and on behalf of other
2 aggrieved employees, hereby brings this representative action Complaint pursuant to the Private
3 Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698, *et seq.*, against
4 Defendants MILLENNIUM REINFORCING, INC., a California corporation; and DOES 1 through
5 50, inclusive (collectively “Defendants”), and alleges as follows:

6 **INTRODUCTION**

7 1. This representative PAGA action, pursuant to Labor Code Sections 2698, *et seq.*, is
8 brought by Plaintiff on behalf of all current and former non-exempt employees of Defendants
9 employed in California during the PAGA Period (collectively the “aggrieved employees”). The
10 term PAGA Period is defined as one year prior to the submission of Plaintiff’s notice of labor code
11 violations to the Labor and Workforce Development Agency and certified mail to Defendants
12 through the date of resolution of this action.

13 2. Plaintiff and aggrieved employees were employed by Defendants, and performed
14 work for Defendants at Defendants’ construction sites throughout California.

15 3. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
16 pattern of wage and hour violations under the California Labor Code (“Labor Code”).

17 4. Plaintiff is informed and believes, and thereon alleges, that during the PAGA Period,
18 Defendants had a consistent policy of violating state wage and hour laws by, among other things:
19 failing to pay all wages (including regular and overtime wages), failing to provide lawful meal and
20 rest periods or compensation in lieu thereof, failing to timely pay all wages due upon separation of
21 employment, failing to provide accurate itemized wage statements, failing to maintain accurate
22 records of hours worked, and failing to reimburse business expenses.

23 5. Plaintiff’s representative PAGA action is brought under, *inter alia*, the California
24 Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the California
25 Code of Regulations, California Code of Civil Procedure Section 1021.5, and California Labor
26 Code Sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, 2698, *et*
27 *seq.*, 2800, and 2802.

28 6. Plaintiff brings this representative action seeking monetary relief against Defendants

1 on behalf of himself and other aggrieved employees to recover, among other things, penalties,
2 attorneys' fees, and costs pursuant to Labor Code Sections 2698, *et seq.*

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction over all causes of action asserted herein pursuant to the
5 California Constitution, Article VI, Section 10, which grants the Superior Court original
6 jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise
7 under California law for which Plaintiff seeks relief authorized by California law. Further, this is
8 a representative PAGA action and the monetary damages, restitution, penalties, and other amounts
9 sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be
10 established according to proof at trial.

11 8. This Court has jurisdiction over all Defendants because each Defendant is a citizen
12 of California, a corporation or association organized under the laws of the State of California, an
13 association authorized to do business in California and registered with the California Secretary of
14 State, does sufficient business in California, has sufficient minimum contacts with California,
15 and/or intentionally avails itself of the laws and markets of California through the promotion, sale,
16 marketing and distribution of its products and/or services in California to render the exercise of
17 jurisdiction by the California courts permissible. In addition, PAGA penalties cannot be aggregated
18 to meet the jurisdictional threshold for diversity jurisdiction in federal court.

19 9. Venue in Los Angeles County is proper under California Business & Professions
20 Code Section 17203 and California Code of Civil Procedure Section 395.5 because a substantial
21 part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County,
22 Defendants had and have ongoing projects in this County, Defendants conduct substantial business
23 in this County, Defendants' liability arose in this County, and/or Defendants reside, transact
24 business, maintain offices, and/or have an agent or agents in this county. The relief requested is
25 within the jurisdiction of this Court.

26 **PARTIES**

27 10. Plaintiff is an individual who resides in Los Angeles County, California and was
28 formerly employed by Defendants in California as a non-exempt employee during the PAGA

1 Period. Plaintiff was assigned to work at Defendants' worksites in Los Angeles County during the
2 PAGA Period and his employment ended within one (1) prior to the filing of this action.

3 11. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
4 MILLENNIUM REINFORCING, INC. ("MRI") was and is a California corporation with its
5 principal executive office located in San Clemente, California. MRI is in the construction business
6 and operates throughout California, including Los Angeles County. MRI regularly conducts
7 business within the State of California and derives substantial revenues from services performed in
8 California. MRI is, and at all relevant times was, an employer subject to California state wage and
9 hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of
10 MRI that are complained of by way of this Complaint were implemented during the PAGA Period.

11 12. Defendants continue to employ non-exempt employees within California.

12 13. Plaintiff is unaware of the true names and capacities of those Defendants identified
13 as DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
14 informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent,
15 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
16 each related entity, and was acting with the knowledge and authorization of each of the other
17 Defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of
18 each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed,
19 believes and thereon alleges that each of the Defendants sued as DOES 1 through 50 participated
20 in, received the benefit of, or was in some way responsible for one or more of the wrongful acts
21 and omissions and some portion of the damages alleged herein.

22 14. Plaintiff is informed, believes and thereon alleges that at all times material hereto,
23 each Defendant acted in all respects pertinent to this action as the agent of the other Defendant,
24 carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of
25 each Defendant are legally attributable to the other Defendant. Furthermore, Defendants in all
26 respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

27 15. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of
28 them, at all times material hereto, were the joint employers, parent companies, successor

1 companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers,
2 directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants.
3 Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions
4 alleged herein within the course and scope of said relationship(s), and are a proximate cause of
5 Plaintiff's damages as herein alleged.

6 16. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
7 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality
8 and separateness between the individual and the corporation does not exist, as Defendants, and
9 DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned
10 herein were mere shells, instrumentalities and conduits through which DOES 1 through 50,
11 inclusive, carried out their business in the business name, exercising complete control and
12 dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1
13 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES
14 1 through 50, inclusive, and were without the financial solvency and responsibility required by law;
15 and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50,
16 inclusive, or some other individual or entity which he or she owns or controls, with the intent to
17 hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further,
18 Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship
19 between and among Defendants.

20 17. At all relevant times herein, Defendants were agents of each other and acting within
21 the course and scope of their agency.

22 **GENERAL ALLEGATIONS**

23 18. At all relevant times herein, Defendants employed Plaintiff and other persons as
24 non-exempt employees.

25 19. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
26 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
27 knowledgeable about California wage and hour law, employment and personnel practices, and the
28 requirements of California.

1 20. Through this action, Plaintiff alleges Defendants have consistently maintained and
2 enforced against Plaintiff and aggrieved employees unlawful employment practices and policies
3 which violate the California Labor Code and IWC Wage Orders.

4 21. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,
5 Defendants failed to pay Plaintiff and aggrieved employees all regular and overtime wages for all
6 hours worked in violation of the California Labor Code and IWC Wage Orders. Specifically, during
7 the PAGA Period, Defendants failed to compensate Plaintiff and aggrieved employees for all hours
8 worked by rounding their time worked to Defendants' advantage.

9 22. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,
10 Defendants deprived Plaintiff and aggrieved employees of the opportunity to take all of their
11 statutorily entitled meal periods within the appropriate time intervals or provide compensation in
12 lieu thereof in violation of the California Labor Code and IWC Wage Orders. Specifically, Plaintiff
13 and aggrieved employees were frequently required to take a meal period after the first five hours
14 of work. For example, Plaintiff and aggrieved employees were not provided a meal period until a
15 food truck arrived at the worksite more than five hours after the start of their shift. Additionally,
16 Plaintiff and aggrieved employees frequently missed their meal periods, or had them shortened or
17 interrupted because Defendants required them to continue working and prioritized work demands
18 over taking legally required breaks. For example, instead of providing Plaintiff and aggrieved
19 employees with meal periods, Defendants maintained a policy of ending their shifts 30 minutes
20 early in lieu of a meal period. Further, Defendants failed to adopt and implement a policy
21 authorizing a full second 30-minute meal period when Plaintiff and aggrieved employees worked
22 in excess of 10 hours per workday, and maintained a practice of prioritizing work demands over
23 allowing employees to take compliant meal periods. Accordingly, Defendants failed to provide
24 Plaintiff and aggrieved employees with timely, uninterrupted off-duty meal periods for at least 30
25 minutes when they worked more than five hours, and failed to provide uninterrupted off-duty meal
26 periods of at least 30 minutes when they worked more than 10 hours in a workday. Defendants also
27 failed to compensate Plaintiff and aggrieved employees with an additional hour of pay at their
28 regular rate for each day in which they were denied a compliant meal period, in violation of the

1 Labor Code and IWC Wage Orders.

2 23. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,
3 Defendants failed to permit Plaintiff and aggrieved employees to take all of their statutorily entitled
4 10-minute rest periods for every four (4) hours worked or major fraction thereof or provide
5 compensation in lieu thereof in violation of the California Labor Code and IWC Wage Orders.
6 Specifically, Defendants maintained an unlawful practice of combining rest periods, i.e. providing
7 only one rest period of up to 30 minutes when Plaintiff and aggrieved employees worked shifts of
8 over six hours. Further, Defendants failed to compensate Plaintiff and aggrieved employees with
9 an additional hour of pay at their regular rate for each day in which they suffered a rest period
10 violation.

11 24. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,
12 Defendants willfully failed to timely pay all wages due to Plaintiff and the aggrieved employees
13 upon separation of employment in violation of the California Labor Code and IWC Wage Orders.
14 Plaintiff and aggrieved employees were not paid all meal period premiums, rest period premiums,
15 reimbursements, and/or wages (including regular and overtime wages) within the required time
16 period.

17 25. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,
18 Defendants failed to furnish Plaintiff and aggrieved employees with accurate and complete wage
19 statements in violation of the California Labor Code and IWC Wage Orders. Plaintiff and aggrieved
20 employees received wage statements which did not accurately reflect the gross and net wages
21 earned, total hours worked, and all applicable rates of pay and the corresponding number of hours
22 worked at each pay rate.

23 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Defendants were required to keep accurate records of the hours worked by
25 Plaintiff and aggrieved employees. In violation of the California Labor Code, Defendants failed to
26 maintain accurate records of hours worked by Plaintiff and aggrieved employees due to the
27 unlawful practices mentioned above.

28 27. Plaintiff is informed, believes, and thereon alleges that during the PAGA Period,

1 Defendants failed to reimburse Plaintiff and aggrieved employees for necessary business expenses
2 incurred in the performance of their duties in violation of the California Labor Code and IWC Wage
3 Orders. Specifically, Defendants required Plaintiff and aggrieved employees to use their personal
4 cellular phones to communicate with Defendants' supervisors without reimbursing them for a
5 reasonable portion of their cellular phone bills. Further, Defendants required Plaintiff and aggrieved
6 employees to purchase and maintain reflective shirts and protective gear such as sunglasses, boots,
7 gloves and helmets, without reimbursing them for the costs of the uniform and gear. Additionally,
8 Defendants required Plaintiff and aggrieved employees to purchase, maintain and use their own
9 tools and supplies such as pliers, meter sticks, and pencils without reimbursing them for the costs
10 of the tools and supplies. Accordingly, Defendants violated the Labor Code and IWC Wage Orders
11 by failing to reimburse Plaintiff and aggrieved employees for all necessary business expenses.

12 28. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
13 described throughout this Complaint were willful.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

16 **(CAL. LAB. CODE §§ 2698, ET SEQ.)**

17 **(Against All Defendants)**

18 29. Plaintiff incorporates by reference all previous paragraphs of this Complaint as
19 though fully set forth herein.

20 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
21 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
22 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
23 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
24 and other current or former employees pursuant to the procedures specified in Labor Code Section
25 2699.3.

26 31. Under Labor Code Section 2699.3(a), an aggrieved employee may bring a cause of
27 action under PAGA only after giving the LWDA and the employer notice of the Labor Code
28 Sections alleged to have been violated, and after receiving notice from the LWDA of its intention

1 not to investigate or after 65 days have passed without notice from the LWDA.

2 32. Plaintiff gave written notice of the specified provisions alleged to have been
3 violated, including the facts and theories to support the alleged violations, as required by Labor
4 Code Section 2699.3. This written notice was provided via certified mail to Defendants and to the
5 LWDA by electronically filing the notice via the California Department of Industrial Relations'
6 website. More than 65 days have passed without notice from the LWDA since Plaintiff submitted
7 his PAGA notice to the LWDA. Accordingly, Plaintiff has exhausted the procedural requirements
8 under Labor Code Section 2699.3 as to Defendants and is therefore able to pursue a claim for
9 penalties on behalf of himself and all other aggrieved employees under PAGA.

10 33. For all provisions of the Labor Code except those for which a civil penalty is
11 specifically provided, Labor Code Section 2699(f) imposes upon Defendants a penalty of one
12 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
13 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
14 pay period in which Defendants violated these provisions of the Labor Code.

15 34. Labor Code Section 226.3 provides that "[a]ny employer who violates subdivision
16 (a) of Section 226 [of the Labor Code] shall be subject to a civil penalty in the amount of two
17 hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
18 dollars (\$1,000) per employee for each violation in a subsequent citation"

19 35. Labor Code Section 558(a) provides "[a]ny employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the Industrial Welfare Commission
22 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
23 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
24 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
25 for which the employee was underpaid"

26 36. Labor Code Section 1174.5 provides a \$500 civil penalty for an employer's failure
27 to maintain accurate and complete payroll records showing the hours worked daily by and the wages
28 paid to employees.

1 37. The Labor Code Sections violated by Defendants and those upon which Plaintiff
2 seeks the remedies available under PAGA include, but not limited to, the following:

3 (a) Labor Code Sections 201-204, 210, 510, 558, 1194, and 1198 for failure to
4 timely pay all earned wages (including regular and overtime wages) owed to Plaintiff and other
5 aggrieved employees during employment and upon separation of employment as herein alleged;

6 (b) Labor Code Sections 226.7 and 512 for failure to provide meal periods to
7 Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods
8 as herein alleged;

9 (c) Labor Code Sections 226.7 for failure to permit rest breaks to Plaintiff and
10 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
11 alleged;

12 (d) Labor Code Sections 226 and 226.3 for failure to provide accurate itemized
13 wage statements to Plaintiff and other aggrieved employees as herein alleged;

14 (e) Labor Code Sections 1174 and 1174.5 for failure to maintain accurate
15 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged;
16 and

17 (f) Labor Code Sections 2800 and 2802 for failure to reimburse business
18 expenses to Plaintiff and other aggrieved employees as herein alleged.

19 38. As set forth above, Defendants have violated numerous provisions of the Labor
20 Code and IWC Wage Orders regulating hours and days of work.

21 39. Plaintiff is an “aggrieved employee” because he was employed by the alleged
22 violators and had one or more of the alleged violations committed against him, and therefore is
23 properly suited to represent the interests of all other aggrieved employees.

24 40. Pursuant to Labor Code Sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
25 recover civil penalties, in addition to other remedies, for violations of the Labor Code Sections
26 cited above.

27 41. For bringing this action, Plaintiff is also entitled to attorney’s fees and costs incurred
28 herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the aggrieved employees, prays for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees pursuant to Labor Code Sections 226.3, 1174.5, and 2698, *et seq.*

2. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code Sections 2699(g), 2802(c) and California Code of Civil Procedure Section 1021.5; and

3. For such other relief as the Court deems just and proper.

Dated: February 8, 2021

DAILY ALJIAN LLP
LAW OFFICE OF DANIEL J. HYUN

By: 

Justin E. D. Daily
Simon Kwak
Daniel J. Hyun
Attorneys for Plaintiff FRANCISCO
GUARDADO, individually and on behalf
of all others similarly situated