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*MEMBER OF CA, NV, OR & WA BAR

VIA CERTIFIED U.S. MAIL

February 5, 2021

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development
Agency
PAGAfiling@dir.ca.gov

EMPIRE INSULATION, INC.
Attn: Don Royce Johnson,
Agent of Service of Process
8315 Miralani Drive
San Diego, CA 92126

HR Department at Empire Insulation, Inc.
620 S. Frontage Road
Nipomo, CA 93444

RE: Labor Code § 2699 Notice by Aggrieved Employees Carmelo Martinez Garcia

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Empire Insulation, Inc. (“Empire”) and their agents, managers and supervisors, including President/CEO, Melanie K. Moore (collectively “Defendants”), for violations of the California Labor Code described below. I am writing on behalf of Carmelo Martinez Garcia, an aggrieved employee represented by this law firm (hereinafter “Aggrieved Plaintiff”) who seeks to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed by Defendants in California.

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Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Empire Insulation, Inc.'s owners, supervisors, managers, agents and all other persons acting on behalf of Empire and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. On information and belief, Gustavo Loera has complete authority to implement and carry out the illegal wage and hour policies at issue herein.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Empire to pay current and former California non-exempt employees in conformance with the California Labor Code and Wage Orders. At the core of Empire's violations is a policy of failing to record and maintain accurate time records of hours worked, relying instead upon piece-rate compensation that failed to compensate employees for certain required activities. Empire pays its employees based not on the actual number of hours worked, rather, Empire compensates its employees based on the total number of feet of insulation installed at any given jobsites, or piece-rate. This piece-rate system fails to separately compensate its employees for required activities necessary for Aggrieved Employees to execute their duties or non-productive time, for example, loading and unloading materials and tools, travel time, and modifications to already installed insulation.

Empire violates the recordkeeping requirement set forth in Labor Code section 1194 and the applicable Wage Order, failing to document actual time records of work period starts and stops, as well as failing to record meal breaks. Aggrieved Employees are discouraged from taking meal and rest breaks as it would take time away from a workday to install more insulation. Aggrieved Employees are not paid for premium pay for any missed, incomplete, late, or short meal break. Empire fails to compensate premium pay for any missed, incomplete, late, or short rest break. On information and belief, Empire does not have a policy of providing lawful rest and meal breaks to its employees.

Notwithstanding the fact that Empire's piece-rate system fails to compensate for all hours worked outside the units of insulation installed, nor travel time, nor pay owed premiums, Empire's piece-rate system does not compensate its employees in conformance with state overtime requirements by failing to record all actual hours worked by any Aggrieved Employees. Empire's violations of state overtime requirements again flow directly from its failure to separately compensate employees for non-productive work.

Empire failed to issue accurate itemized wage statements to Aggrieved Employee Martinez Garcia and other similarly situated current and former non-exempt employees. The wage statements provided by Empire failed to register for all time work, proper calculation of overtime wages, and failure to account for premium pay.

Lastly, Aggrieved Employee Martinez Garcia was let go in retaliation for refusing to work without pay. Specifically, Employee Martinez Garcia went to complete an installation in El Paso Robles,

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where he was instructed to install double insulation. Upon completion of the laborious task, his supervisor conducted an inspection of his completed work, and the supervisor instructed Employee Martinez Garcia to remove the double installation without any pay as he only was compensated for the number of units installed in a property. Under California law and applicable Wage Orders, an employee may not agree to work for less than minimum wage. Employee Martinez Garcia was terminated for refusing to work for no pay in direct violation of wage-and-hour laws.

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) (“PAGA”) may be based on a wide variety of Labor Code predicate provisions, including but not limited to §§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 2810.5, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 *et seq.* and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees and pursuant to the underlying PAGA.

In particular, the policies described above, and the violations set forth below relate to all the non-exempt employees employed by Empire at locations and worksites in California and include:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 558, 1197.1 and the Wage Orders. As described herein, the failure to compensate for all hours worked stems from Empire’s piece-rate system and its failure to create and maintain accurate timekeeping records, including failure to pay for non-productive time.
2. Failure to create and maintain accurate records as required by California Labor Code section 1174 and the applicable Wage Order, including accurate start and stop times of work and meal period records.
3. Failure to pay proper premium/overtime wages both as a result of uncompensated work and as a result of Empire having counted all scheduled hours as regular hours rather than in accordance with California overtime law in violation of Labor Code section 510 and the applicable Wage Order.
4. Failure to properly provide/authorize and permit all paid ten-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code §§ 226.7, the applicable Wage Order, and California case law.
5. Failure to properly provide/authorize and permit proper meal breaks to which non-exempt employees are entitled, and failure to pay premium meal period wages in lieu of meal breaks, in violation of Cal. Labor Code §§ 226.7, 512, the applicable Wage Order, and California case law.

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6. Failure to provide accurate wage statements. Employee wage statements failed to include total hours worked, all applicable hourly rates, accurate gross and net wages earned, and contained the wrong legal entity employer address in violation of Labor Code §§ 226, 1174 and the Wage Orders.
7. Failure to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202, 203, 256, and 1197.1 since Empire systematically failed to pay all wages earned, including unpaid minimum wages and owed break premiums.
8. Retaliation for refusing to work for no pay. Aggrieved Plaintiff was let go after he refused to undo an installation that was completed as per the manager's instructions. Having to undo his work would have resulted in no pay as Empire only compensates for actual number of insulations installed.

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code and are PAGA penalties.

Aggrieved Plaintiff, who was an insulation installer for Empire during from approximately January 10, 2020 to June 5, 2020 may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken within 60 days, we will assume that we may pursue this action under the theories described above against the Defendants described above and their managers, agents, owners and other liable persons and entities (pursuant to §§ 210, 558, 1197.1, 2699(f) (and other provisions)).

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiff, the state, and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former employees), all timekeeping records, all rest and meal period records, all duty and responsibility records, all records which include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees,

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all communications relating to these records and documents, and all emails relating to these records and documents.

Sincerely,

MALLISON & MARTINEZ

A handwritten signature in black ink, appearing to read 'Natalia Ramirez Lee', with a stylized flourish at the end.

Natalia Ramirez Lee, Esq.

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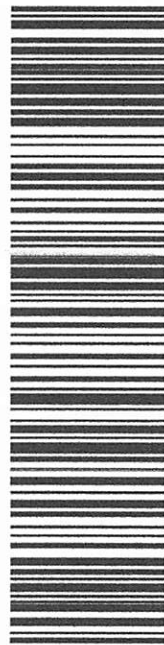
Mallison & Martinez
Attorneys at Law
730
1939 Harrison Street
Oakland CA 94612

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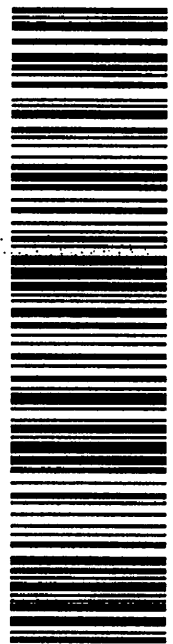
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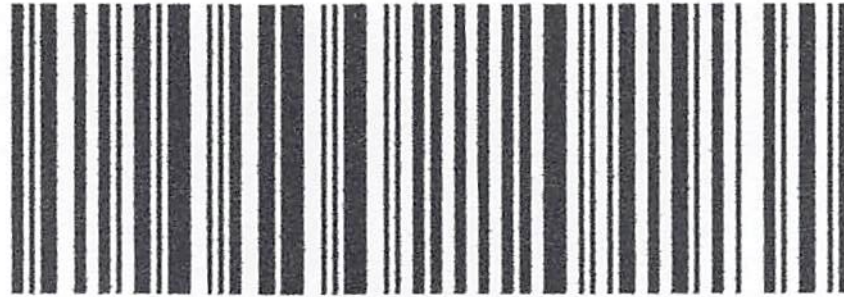


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