

SKIERMONT DERBY

LLP

Dallas

Los Angeles

May 19, 2021

BY ONLINE FILING: <https://dir.tfaforms.net/309>

California Labor and Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

**BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND EMAIL**

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**Re: Candido De Luna v. International Developers and Engineering Group, Inc.,
LWDA-CM-829500-21
Employer Response & Payment of Filing Fee**

Dear PAGA Administrator,

Skiermont Derby LLP represents International Developers and Engineering Group, Inc. ("IDEG") with regard to the letter sent by Rory K. Pendergast to the California Labor and Workforce Development Agency ("LWDA") on April 16, 2021 (the "LWDA Notice Letter," a copy of which is enclosed as Exhibit A).¹ The LWDA Notice Letter was sent on behalf of both Mr. Pendergast's client Candido De Luna and "similarly situated employees," pursuant to California Labor Code section 2699.3(a)(1).

¹ Although the LWDA Notice Letter is dated April 16, 2021, the letter was not received by IDEG until the first week of May 2021. Our office did not receive a copy of the LWDA Notice Letter at all, as counsel failed to include a suite number on the address. Indeed, counsel does not provide any proof of service by certified mail, such as a signature by anyone at our office, as required. (See <https://www.stamps.com/whitepapers/how-to-send-certified-mail.pdf>).

The LWDA Notice Letter does not define or identify the employees who Mr. Pendergast believes are similarly situated to Mr. De Luna. Notably, the LWDA Notice Letter refers to Mr. De Luna as “her” throughout the letter, which is clearly copy-pasted from another matter. Further, the vague allegations provided by Mr. De Luna are insufficient to support any PAGA claims. Nonetheless (and despite not receiving a copy of the LWDA Notice Letter), Skiermont Derby LLP timely submits this Employer Response within thirty-three (33) days after the LWDA Notice Letter.

I. BACKGROUND

A. IDEG

IDEG is a full-service general construction company that provides services, solutions, and project management in a wide range of industries in both the private and government section in Southern California, from data centers and large commercial and industrial projects to historic restoration and luxury residential homes. IDEG, a woman- and minority- owned company, provides 40 years of combined experience in the industry and holds various contractor licenses and certifications.

B. Claimant Candido De Luna

Mr. De Luna was hired by IDEG as a Senior Project Manager on or about June 2, 2019. The Senior Project Manager role is an exempt position, and it is undisputed that Mr. De Luna was paid an annual salary of approximately \$150,000.00.

IDEG has only two (2) Senior Project Managers at any given time, both reporting directly to the CEO, and each responsible for the supervision of approximately ten (10) hourly employees at one or more job sites. Contrary to Mr. De Luna’s assertion in the LWDA Notice Letter, Mr. De Luna did, in fact, regularly exercise independent judgment and discretion in his daily job duties.

Mr. De Luna had the authority to—and did—hire employees for IDEG. Mr. De Luna had the authority to—and did—terminate employees from IDEG. As a Senior Project Manager, Mr. De Luna did not have a set schedule or hours, but he was responsible for determining staffing levels at the project site, assigning hourly employee tasks and roles, and managing workflows. Mr. De Luna determined who came to work when and for how long on which days, and was responsible for directly handling employee issues, including routine HR and related tasks.

There is more. Mr. De Luna had a construction budget, from which he determined how much to spend on what parts and supplies; when such purchases were made, Mr. De Luna was personally responsible for the negotiations as to price and volume. Mr. De Luna was entrusted to make these decisions based on the needs of IDEG's clients and conditions on the ground at the project site; Mr. De Luna was expected to know and understand these needs because he had direct client and customer contact (as a sub-contractor at the Casa de Rosas project, the "client" was the General Contractor, with whom Mr. De Luna met on his own regularly) without input or oversight from upper management. Mr. De Luna had a company car. And he had a company credit card.

At \$150,000.00 per year, Mr. De Luna was making nearly what the top 5% of households in the United States (at \$166,200/year) earn annually. That, coupled with near-complete discretion to manage a major construction project, its budget, workflow, and employees, with next-to-zero oversight, no set schedule, a company car and a company credit card, means that Mr. De Luna's misclassification claim does not just border on the frivolous; it is frivolous.

Mr. De Luna also misstates the circumstances of his departure from IDEG. While not the subject of this letter, Mr. De Luna failed to meet expectations—not just of IDEG, but of the General Contractor, upon whose continued engagement of IDEG the company and all of its employees rely. Mr. De Luna failed to timely submit his team's timesheets, did not timely or properly invoice for materials, and most important, failed to submit (often for weeks or months on end) equipment and related reports required of a subcontractor such as IDEG; timely, properly, and completely submitting such reports directly to the General Contractor (without upper management review) was but one of his many tasks as a Senior Project Manager.

None of this was known to IDEG's upper management until an in-person meeting on or about April 22, 2020, between IDEG's Chief Executive Officer, IDEG's President, Mr. De Luna, and representatives of the General Contractor. At the meeting, the General Contractor identified each of these (and more) as major issues that threatened IDEG's continued role with the project, and all of these issues fell squarely within the scope of Mr. De Luna's responsibilities as a Senior Project Manager. After the meeting, IDEG's CEO and its President instructed Mr. De Luna to attend an internal conference to discuss how to respond to the General Contractor's concerns and get things back on track. When IDEG upper management determined that this internal meeting was necessary, neither of IDEG's CEO nor its President intended to fire Mr. De Luna, and told him so directly (as it was obvious just how serious the issues were and how bad the meeting with the General Contractor had gone).

Rather than engage in a collaborative or productive discussion about moving forward, Mr. De Luna told IDEG's CEO and its President that he quit, on the spot. Mr. De Luna followed through on his intended resignation by not attending the meeting and failing to provide any reasonable basis for not attending, particularly in light of the dire straits IDEG's relationship with the General Contractor were then in as a result of Mr. De Luna's inaction. Accordingly, IDEG accepted Mr. De Luna's resignation. Surprisingly, Mr. De Luna showed up to the IDEG site the next day, and tried to recant his resignation, but was told that his resignation had already been accepted.

II. MR. DE LUNA'S MERITLESS ALLEGATIONS

In his LWDA Notice Letter, Mr. De Luna sets forth a laundry list of alleged violations by IDEG, including:

- 1) Failure to pay overtime wages;
- 2) Failure to provide meal premiums;
- 3) Failure to provide rest period premiums;
- 4) Failure to provide accurate pay stub information;
- 5) Failure to make timely payments;
- 6) Failure to pay employees wages owed following termination or resignation of employment; and
- 7) Retaliation and wrongful termination²

That Mr. De Luna can allege essentially every conceivable violation of California law is explained by the fact that he offers no supporting facts or even clear theories of liability. Mr. De Luna instead mostly only asserts violations of certain California Labor Code provisions in conclusory fashion, which is legally insufficient.

California Labor Code section 2699.3(a)(1)(A) required Mr. De Luna to describe his alleged violations of California law and detail the facts and theories supporting the alleged violations. Mr. De Luna did not detail his supporting facts and theories, instead largely offering only legal conclusions, and for that reason, the LWDA Notice Letter must be rejected in its entirety. *Brown v. Ralphs Grocery*

² Mr. De Luna also claims that IDEG "failed to reimburse [him] for out of pocket expenditures..." but does not separately detail this alleged statutory violation in his LWDA Notice Letter. In any event, any claim for expense reimbursement is nonsensical, as Mr. De Luna was provided a company Visa card (Chase, account ending -7041), which credit card he could and did use for all work-related expenses. Mr. De Luna offers no facts or theories as to how he could possibly be owed any money by IDEG given the foregoing. Instead, he is plainly stating (false) legal conclusions that have no basis in fact or reality.

Co., 28 Cal. App. 5th 824, 837–38 (2018); *Brown v. Cinemark USA Inc.*, 705 Fed. Appx. 644, 645 (9th Cir. 2017); *Alcantar v. Hobart Serv.*, 800 F.3d 1047, 1057 (9th Cir. 2015); *Wyland v. Berry Petroleum Co.*, No. 1:18-cv-01414-DAD-JLT, 2019 WL 5079562, at *2–3 (E.D. Cal. Oct. 10, 2019); *Mareles v. Paragon Sys., Inc.*, No. 13-cv-00122-L-BGS, 2016 WL 7634439, at *5 (S.D. Cal. Feb. 9, 2016); *Soto v. Castlerock Farming & Transp. Inc.*, No. CIV-F_09-0701 AWI, 2012 WL 1292519, at *8 (E.D. Cal. Apr. 16, 2012). The most egregious examples of this are detailed below.

A. Misclassification And Failure To Pay Overtime

Mr. De Luna offers zero detail as to why he thinks that he and/or other employees were misclassified as exempt, making this claim defective. *Brown*, 28 Cal. App. 5th at 837–38; *Alcantar*, 800 F.3d at 1057. As detailed above, Mr. De Luna was indisputably an exempt salaried employee. Further, conclusory statements that Mr. De Luna “worked more than eight (8) hours in a day and forty (40) hours in a week,” are not sufficient to set forth claims for overtime.

B. Meal Breaks

Mr. De Luna's meal breaks claim fails because he was exempt from California Labor Code section 512, having performed the role of a Senior Project Manager, which is an exempt position under IWC Wage Order 4. That Mr. De Luna qualified as an exempt salaried employee is not even a close call.

C. Rest Breaks

Mr. De Luna's rest breaks claim fails for the same reason as his meal breaks claim: he was employed as an exempt salaried employee.

D. Wage Statements

This claim is never explained in any detail by Mr. De Luna, and thus defective. *Brown*, 28 Cal. App. 5th at 837–38; *Alcantar*, 800 F.3d at 1057. Mr. De Luna only quoted California Labor Code section 226, and then said that IDEG violated each of the provisions. (LWDA Notice Letter at 3–4.) In addition, Mr. De Luna's wage statements claim is largely derivative, e.g., failure to pay for meal breaks and rest breaks, failure to pay overtime (*id.*), and because these other claims fail, so does the wage statements claim. *Donohue v. AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1100–03 (2018).

E. Timely Payments

Mr. De Luna's claim for failure to make timely payments is vague, and thus defective. *Brown*, 28 Cal. App. 5th at 837–38; *Alcantar*, 800 F.3d at 1057. As with his other claims, Mr. De Luna simply quoted California Labor Code section 204, and then said that he earned monthly bonuses that were not included in his payments when IDEG calculated overtime pay. (LWDA Notice Letter at 4–5.) But Mr. De Luna was an exempt salaried employee who was not entitled to overtime, such that any bonuses that he may have received would not be tied to any overtime calculation. In addition, Mr. De Luna's claim is largely derivative, e.g., failure to count bonuses in calculating overtime pay (*id.*), and because these other claims fail, so does this claim. *Donohue v. AMN Servs., LLC*, 29 Cal. App. 5th 1068, 1100–03 (2018).

F. Wages Due At Termination

This claim is never explained in any detail by Mr. De Luna, and thus defective. *Brown*, 28 Cal. App. 5th at 837–38; *Alcantar*, 800 F.3d at 1057. In any event, any purported wages owed to Mr. De Luna (overtime and/or meal and rest period premiums) would be derivative, and thus the claim fails given that Mr. De Luna was an exempt salaried employee. *Donahue*, 29 Cal. App. 5th at 1100–03.

G. Retaliation and Wrongful Termination

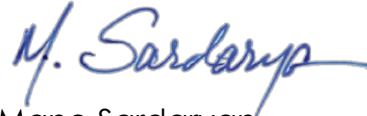
Mr. De Luna resigned from his position and was not wrongfully terminated. Moreover, Mr. De Luna did not make any complaints about any wage issues or otherwise. The single conclusory paragraph in the LWDA Notice Letter—which states that “[IDEG] routinely failed to pay [Mr. De Luna] and similarly aggrieved employees their earned wages in a timely manner. [Mr. De Luna] lodged numerous complaints regarding [IDEG's] failure to pay employees their owed wages and was terminated as a direct result of those complaints” (LWDA Notice Letter at 5)—without any supporting facts or theories makes the claim legally insufficient. *Brown*, 28 Cal. App. 5th at 837–38; *Alcantar*, 800 F.3d at 1057.

The seventy-five dollar (\$75) filing fee to the California Labor and Workforce Development Agency is being submitted online with a copy of this response, at <https://dir.tfaforms.net/309>.

PAGA Administrator
May 19, 2021

Please do not hesitate to contact me with any questions or if you need any further information.

Very truly yours,



Mane Sardaryan

cc: Paul B. Derby (i/o)
John J. O'Kane IV (i/o)
Client

Enclosure (Exhibit A)

Exhibit A

THE PENDERGAST LAW FIRM, PC

3019 Polk Avenue
San Diego, CA 92104
Telephone: 619.344.8699
Facsimile: 619.344.8701

April 16, 2021

Via Electronic Mail
PAGA Administrator
PAGAfilings@dir.ca.gov

Re: *Candido De Luna v. International Developers and Engineering Group, Inc.*

PAGA NOTICE PURSUANT TO LABOR CODE SECTION 2699, et seq.

Dear PAGA Administrator:

Our office, along with co-counsel Ross Quient of the Law Offices of Ross Quient, represent Candido De Luna, individually and on behalf of all other current or former "aggrieved employees" ("Plaintiffs"), who are current or former employees of International Developers and Engineering Group, Inc. ("IDEG") who worked in California. Mr. De Luna is a representative "aggrieved employee" because IDEG committed one or more of the following Labor Code violations against her within the applicable statute of limitation.

Pursuant to Labor Code Section 2699.3, this letter constitutes written notice of Defendant's various Labor Code violations and of our intent to recover statutory penalties under the Labor Code's Private Attorney General Act of 2004. A copy of this letter is being sent to the defendant. PAGA payment has been made/is being made via the online portal.

INVOLVED ENTITY

International Developers and Engineering Group is a California corporation registered to do business in the state of California (California Secretary of State registration number C3521595). IDEG is a general construction company providing building services and project management in a range of industries in both the private and government sector around Southern California. Projects include data centers, large commercial and industrial projects, as well as historic restoration and luxury residential homes.

SPECIFIC ALLEGATIONS

Candido De Luna worked for IDEG from June 3, 2019 until approximately April 22, 2020 as a project manager. Mr. De Luna was characterized throughout his employment as an exempt salaried employee under IWC Wage Order 4. Mr. De Luna did not regularly exercise independent judgment or discretion in his daily job duties. Specifically, Mr. De Luna would constantly have to check with and obtain approval from IDEG CEO Marisela Nuno for renting equipment, change in orders, and checking to make sure IDEG had the money to pay vendors. Furthermore, Mr. De Luna needed to obtain approval for overtime for IDEG hourly employees. Mr. De Luna was regularly required to call Ms. Nuno with issues regarding general contractors and followed her directions. Therefore, Mr. De Luna does not meet the test for either the executive or administrative exemption under IWC Wage Order 4.

Mr. De Luna, as the representative aggrieved employee, worked more than eight (8) hours in a day and forty (40) hours in a week and was not properly paid overtime wages for his work. Mr. De

Luna was extremely concerned for himself and similarly aggrieved employees because IDEG consistently failed to make payroll and pay employees their owed wages in a timely manner. The failure to pay owed wages was a constant conflict between IDEG management and Mr. De Luna. Mr. De Luna was constantly lodging complaints with IDEG management regarding failure to pay employees their earned wages in a timely manner, failure to pay prevailing wages as required by DIR, failure to pay contractors, failure to pay rent for IDEG's warehouse, and partial payments received.

On April 21, 2020 these complaints came to a head as Mr. De Luna demanded answers regarding IDEG's ongoing labor law violations. Arnie Robles demanded that Mr. De Luna come to his house for a separation meeting and our client refused due to Covid-19 concerns. The next day, Mr. Robles told Mr. De Luna that "we accept your resignation." Mr. De Luna stated that he was not resigning and was instead terminated by IDEG.

In addition, Defendant failed to provide Mr. De Luna and similarly aggrieved employees required meal periods as required by the Labor Code. And Defendant did not provide Mr. De Luna an hour of compensation at his regular rate of pay for all of his missed meal periods. Moreover, whatever meal periods Mr. De Luna may have taken were not "uninterrupted."

Likewise, Mr. De Luna was not provided rest breaks as required by California law.

Finally, Defendant failed to reimburse Mr. De Luna for out of pocket business expenditures and failed to pay all wages earned and payable at or around their date of separation.

Based on these facts, Defendant is liable as set forth below.

STATUTORY VIOLATIONS

A. Failure to Pay Overtime Wages Pursuant to California Labor Code Sections 510 and 1198

Pursuant to Labor Code Sections 200, 500, 510 and 1198, Defendant was required to compensate Plaintiff Candido De Luna, and other aggrieved employees, for all overtime. Based on Plaintiffs' required duties, they were employees entitled to the protections of the Labor Code Sections identified above. For the relevant claim periods for Plaintiffs, Defendant failed to correctly compensate Plaintiffs for overtime hours worked as required by the aforementioned labor regulations and statutes.

As a direct result, Plaintiffs have suffered substantial losses related to the use and enjoyment of such wages, lost interest on such wages, expenses, and attorneys' fees in seeking to compel Defendants to fully perform their obligations under California Law, all to the Plaintiffs' detriment.

Pursuant to Labor Code Sections 200-204, 218.6, 226, 510, and 1194, and Civil Code Section 3289, Plaintiffs, and other aggrieved employees, are entitled to recover the unpaid balance of hourly pay owed (if any), overtime compensation, interest, penalties, attorneys' fees, expenses, and costs of suit.

B. Failure to Provide Meal Premiums Pursuant to California Labor Code Sections 226.7 and 512

Pursuant to California Labor Code Sections 226.7 and 512, and Industrial Welfare Commission Order 4-2001, Section 11, duty-free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day, except that if the employee's total work period per day is no more than (6) hours, the meal period may be waived by mutual consent of the employer and employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee, but only if the first meal period was not waived. Meal breaks must be recorded unless the meal period is taken when business operations have ceased. The meal periods are unpaid unless the employee is not fully relieved of all duties. However, an employer who fails to provide duty-free meal periods must pay the employee an additional one (1) hour regular pay for each day in which a duty-free meal period is not provided.

Plaintiffs were non-exempt employees. Defendant failed to provide Plaintiffs with duty-free meal periods. Thus, Defendant failed to provide meal to Plaintiffs in direct violation of California's Labor Code.

At all times mentioned herein, Defendant violated Labor Code Sections 226.7 and 512 by failing to provide Plaintiffs with duty-free meal and/or rest periods in accordance with California Law. Accordingly, Plaintiffs seeks damages available pursuant to Labor Code Sections 226.7 and 512, plus interest pursuant to Labor Code Section 1194 and Civil Code Section 3289.

C. Failure to Provide Rest Period Premiums Pursuant to California Labor Code Sections 226.7 and 512

Pursuant to California Labor Code Section 226.7 and Industrial Welfare Commission Order 4-2001, Section 12, employers must also provide non-exempt employees a ten (10) minute duty-free rest period every four (4) consecutive hours worked. Rest periods need not be recorded. Duty-free rest periods must be paid. An employer who fails to provide duty-free rest periods must pay the employee an additional one (1) hour regular pay for each day in which a duty-free rest period is not provided.

Plaintiffs were non-exempt employees. Defendant failed to provide Plaintiffs with duty-free rest periods after four (4) consecutive hours worked. Thus, Defendants failed to provide rest periods to Plaintiffs in direct violation of California Labor Code Sections herein.

Further, not only did Defendant not provide Plaintiffs with the required rest periods, Defendant also did not pay Plaintiffs rest period premiums.

At all times mentioned herein, Defendant violated Labor Code Sections 226.7 and 512 by failing to provide Plaintiffs with duty-free rest periods in accordance with California law. Accordingly, Plaintiffs seeks damages available pursuant to Labor Code Sections 226.7 and 512, plus interest pursuant to Labor Code Section 1194 and Civil Code Section 3289.

D. Failure to Provide Accurate Pay Stub Information Pursuant to California Labor Code Section 226 (a)

Labor Code Section 226(a) states, in part: "[a]n employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours

worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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”

Labor Code Section 226(e)(1) states: “[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

Further, Labor Code Section 226.3 states, in part: “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Defendant failed to provide Plaintiffs with pay stubs which included an accurate itemized statement indicating gross wages earned, applicable hourly rates, and the number of hours worked at each hourly rate. The pay stubs that were provided to Plaintiffs did not include the accurate amount of overtime wages earned by Plaintiffs nor did it include Plaintiffs proper rate of pay, and other aggrieved employees, or the number of hours Plaintiffs, and other aggrieved employees, worked at overtime hourly rates. Consequently, Defendant’s failure to provide accurate pay stubs violated Labor Code Section 226(a).

Defendant knowingly and intentionally failed to comply with Labor Code Section 226(a). Accordingly, Defendant is liable for damages owed to Plaintiffs as specified in Labor Code Section 226(e)(1) and are additionally responsible for the payment of civil penalties as provided for in Labor Code Section 226.3.

E. Failure to Make Timely Payments Pursuant to California Labor Code Sections 204 and 210

Pursuant to Labor Code Section 204(a): “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Defendant routinely failed to pay Plaintiffs their earned overtime on paydays and as required by California Law, as stated above. Specifically, Plaintiffs earned monthly bonuses which were not included when Defendant calculated the rate of Plaintiffs overtime pay. Accordingly, Defendant

worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 . . .”

Labor Code Section 226(e)(1) states: “[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

Further, Labor Code Section 226.3 states, in part: “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Defendant failed to provide Plaintiffs with pay stubs which included an accurate itemized statement indicating gross wages earned, applicable hourly rates, and the number of hours worked at each hourly rate. The pay stubs that were provided to Plaintiffs did not include the accurate amount of overtime wages earned by Plaintiffs nor did it include Plaintiffs proper rate of pay, and other aggrieved employees, or the number of hours Plaintiffs, and other aggrieved employees, worked at overtime hourly rates. Consequently, Defendant’s failure to provide accurate pay stubs violated Labor Code Section 226(a).

Defendant knowingly and intentionally failed to comply with Labor Code Section 226(a). Accordingly, Defendant is liable for damages owed to Plaintiffs as specified in Labor Code Section 226(e)(1) and are additionally responsible for the payment of civil penalties as provided for in Labor Code Section 226.3.

E. Failure to Make Timely Payments Pursuant to California Labor Code Sections 204 and 210

Pursuant to Labor Code Section 204(a): “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

Defendant routinely failed to pay Plaintiffs their earned overtime on paydays and as required by California Law, as stated above. Specifically, Plaintiffs earned monthly bonuses which were not included when Defendant calculated the rate of Plaintiffs overtime pay. Accordingly, Defendant

must pay penalties under Labor Code Section 210 as follows: for any initial violation, one hundred (\$100) for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

F. Failure to Pay Employees Wages Owed Following Termination or Resignation of Employment Pursuant to Labor Code Sections 201-203

Certain of the "aggrieved employees" were either involuntarily or voluntarily discharged from employment with Defendant. Accordingly, pursuant to Labor Code Sections 201-203, they are entitled to wages earned and unpaid at the time of discharge. However, these discharged "aggrieved employees" were not given their wages earned and unpaid at the time of their discharge or within the time allotted by Labor Code Sections 201 and 202.

Defendant committed the acts stated herein knowingly and willfully, and these discharged "aggrieved employees" are therefore entitled to waiting time penalties as provided by Labor Code Sections 201, 202, and 203.

G. Retaliation and Wrongful Termination Pursuant to Labor Code Sections 1102.5 and 98.6

Pursuant to Labor Code Section 1102.5, there is an actionable retaliation claim where an employee's termination resulted from the employee's "refus[al] to participate in an activity that would result in a violation of a state or federal statute, or a violation or noncompliance with a state or federal regulation." Cal. Lab. Code § 1102.5(c). Further, a section 1102.5(c) violation triggers civil penalties pursuant to PAGA. See Cal. Lab. Code § 2699.5. Labor Code Section 98.6 states: "A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter," including an employee who has made a complaint about unpaid wages.

Defendant routinely failed to pay Plaintiff and similarly aggrieved employees their earned wages in a timely manner. Plaintiff lodged numerous complaints regarding Defendants failure to pay employees their owed wages and was terminated as a direct result of those complaints.

REQUEST TO THE LWDA

Plaintiff, acting in her individual capacity and on behalf of other aggrieved employees, respectfully requests that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Candido De Luna fully intend to bring a Superior Court action on her own behalf and in her representative capacity on behalf of other current or former aggrieved employees, for penalties pursuant to California Labor Code Sections 2699, et seq. for Defendants' violations of the various enumerated Labor Code Sections set forth throughout this notice letter, including, but not limited to Labor Code Sections 98.6, 201-204, 210, 218.6, 226, 226.7, 226.8, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, and 1197.1.

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PAGA Administrator
De Luna v. IDGE
April 16, 2021
Page 6

If you have any questions or concerns regarding the above, please do not hesitate to contact my office. Thank you for your attention to this matter.

Sincerely,



Rory K. Pendergast

Enclosure: Proof of Filing (to PAGA defendants)

Sent Via Regular & Certified Mail to:

International Developers and Engineering Group, Inc.
624 S. Grand Avenue, Suite 1711
Los Angeles, CA 90017

International Developers and Engineering Group, Inc.
c/o Mane Sardaryan
Skiermont Derby LLP
800 Wilshire Boulevard
Los Angeles, CA 90017

4/16/2021

The Pendergast Law Firm, PC Mail - State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation



Rory Pendergast <rory@rorylaw.com>

State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "rory@rorylaw.com" <rory@rorylaw.com>

Fri, Apr 16, 2021 at 7:33 AM

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-829500-21

Order Number: ORD-000102655

Total: \$75.00

Card Type: Visa

Date: 4/16/2021

Billing Information

Name: Rory Pendergast

Email: rory@rorylaw.com

Billing Address:

3019 Polk Avenue

San Diego, California

92104