

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

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.

///

///

///

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,

A handwritten signature in black ink, appearing to read 'Rory K. Pendergast', with a stylized, flowing script.

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