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November 8, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL #7019 0700 0001 7488 8992

Return Receipt Requested

Case Industries, Inc.
1349 Thiel Road
Hayward, CA 94544

Re: Oscar Arana v. Case Industries, Inc.

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Case Industries, Inc.

From: Oscar Arana, on behalf of himself and aggrieved employees who were subject to the employer's wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Oscar Arana ("Mr. Arana"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. ("PAGA"), on behalf of himself and all other Aggrieved Employees.

Theories of Labor Code Violations and Remedies

Case Industries Inc. ("Case" or "Employer") is a California corporation. Mr. Arana began working for Case in or around March of 2020 until on or about January 16, 2021.

Mr. Arana alleges that Case violated various sections of the Labor Code, including sections 201, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, and 2802 by:

- a) failing to pay Mr. Arana and aggrieved employees all wages owed, including overtime and double time wages,
- b) failing to provide Mr. Arana and aggrieved employees with compliant meal periods or premium compensation in lieu thereof,
- c) failing to provide Mr. Arana and aggrieved employees with rest periods or premium compensation in lieu thereof,
- d) failing to provide Mr. Arana and aggrieved employees with accurate itemized wage statements and failing to maintain accurate payroll records,
- e) failing to reimburse Mr. Arana and aggrieved employees for necessary business expenditures, and
- f) failing to pay all wages earned and owed upon termination or separation of employment.

Mr. Arana and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for Case in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employer failed to pay Mr. Arana and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.”

Employer failed to compensate Mr. Arana and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Employer required Mr. Arana and aggrieved employees to arrive to work at 5:30 a.m. and perform preparatory work for ten minutes before clocking in for their shift. Specifically, before clocking in for the day, Mr. Arana and aggrieved employees were required to prepare their trucks by ensuring that shovels, masks, brooms, and gloves were on the truck and also by connecting their trucks to the compacting machines. Mr. Arana and aggrieved employees were not permitted to clock in until 5:40 a.m. each morning after they had already been working for ten minutes.

Accordingly, since Mr. Arana and aggrieved employees were not paid at all for the time they spent working prior to the start of their shift, Employer failed to compensate them at the applicable overtime or double time wage rate. Mr. Arana and aggrieved employees worked between ten and twelve hour shifts each day. Thus, the additional unpaid ten minutes of work is compensable at the overtime rate for days in which Mr. Arana and aggrieved employees worked ten hours. On

days in which Mr. Arana and aggrieved employees worked twelve-hour shifts, the unpaid time is compensable at the applicable double time rate.

Employer's failure to pay Mr. Arana and aggrieved employees for all hours worked, including applicable overtime and double time rates, as detailed above, is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employer failed to provide Mr. Arana and aggrieved employees with compliant meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Mr. Arana and aggrieved employees were instructed by Employer as to when to take their meal period and were not permitted to take their meal period until they received a text from the supervisor permitting as much. Mr. Arana and aggrieved employees almost always received their meal period at 12:00 p.m. or 12:30 p.m. and never received their meal period before 12 noon. However, Mr. Arana and aggrieved employees started their shift at 5:30 a.m., thus their meal periods were untimely as they were not provided before the fifth hour of work. Further, when Mr. Arana and aggrieved employees worked more than ten hours in a workday, they did not receive a second meal period as required by law.

Mr. Arana and aggrieved employees were instructed by Employer to bring their own lunch because Employer did not want them to take the time to drive anywhere to buy food. Mr. Arana and aggrieved employees were required to park somewhere along their route, near the next stop, and eat their meal in the work truck and were not permitted to leave the truck.

When Mr. Arana and aggrieved employees were not provided with compliant meal periods, there were not compensated with one hour of pay at their regular rate of pay as required by law.

Employer's conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employer failed to provide Mr. Arana and aggrieved employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Due to the workload and demands of Employer, Mr. Arana and aggrieved employees were prohibited from taking rest periods. Employer informed Mr. Arana and aggrieved employees that rest periods were not permitted because Employer did not want Mr. Arana and aggrieved

employees to get behind on their work. Mr. Arana and aggrieved employees were not compensated with one hour of pay at their regular rate of pay for each day that a rest period was not provided as required by law.

Employer's conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as a violation of Labor Code section 226.7.

D. Employer failed to provide Mr. Arana and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, and corresponding number of hours worked at each hourly rate. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failed to pay Mr. Arana and aggrieved employees for all hours worked, to the extent that Employer provided wage statements, they were incomplete and inaccurate. Specifically, Employer's wage statements reflected an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Moreover, when Mr. Arana and aggrieved employees requested wage statements, Employer refused to provide them.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. Employer failed to reimburse Mr. Arana and aggrieved employees for necessary business expenditures

Pursuant to Labor Code section 2802, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Employer required Mr. Arana and aggrieved employees to utilize their personal cellular devices every day to clock in and out for their shift and their meal period. Mr. Arana and aggrieved employees were required to send a text message as the method for clocking in and out each day. Mr. Arana and aggrieved employees were never reimbursed for using their personal cellular device for work purposes.

Employer's failure to reimburse Mr. Arana and aggrieved employees for all necessary business expenditures, specifically the use of their personal cellular devices, is a violation of Labor Code section 2802 and is therefore actionable under PAGA.

F. Employer failed to pay Mr. Arana and aggrieved employees all wages earned and owed upon termination or separation of employment

Pursuant to Labor Code section 201, subdivision (a), "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202, subdivision (a) provides, "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

At the time that Mr. Arana and Aggrieved Employees resigned or were terminated, Employer failed to compensate them for all wages earned and owed as well as for meal and rest premiums and reimbursement for work expenses as described herein.

Labor Code section 203, subdivision (a), states that "[i]f an employer willfully fails to pay ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Accordingly, Mr. Arana and Aggrieved Employees are entitled to thirty days of waiting time penalties.

G. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Arana becomes aware of additional compensation owed or losses incurred by Mr. Arana or by any other aggrieved employee of the Employer, Mr. Arana expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Laura Theriault, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: ltheriault@mahoney-law.net

Sincerely,



Laura Theriault, Esq.

MAHONEY LAW GROUP, APC