LAW OFFICES OF NATALIE MIRZAYAN

December 3, 2021

VIA ONLINE FILING
Labor & Workforce Development Agency
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED MAIL

GREGORY FIELDING
374 James Bowie Court
Alamo, California 94507

REGISTERED AGENTS, INC.
1401 21ST ST, STE R
SACRAMENTO CA 95811

MVP EVENT PRODUCTIONS, LLC, dba
MVP EVENT STAFFING
160 Alamo Plaza 486
Alamo, California 94507

Re: ***Notification of Labor Code Private Attorney General Action, Labor Code 2698 et. seq. Against MVP Event Production, LLC., dba MVP Event Staffing; and Gregory Fielding.***

This notification is provided in advance of a civil action under Labor Code Private Attorney General Act of 2004, ("PAGA"). This office represents Mr. Domingo Murchison ("Mr. Murchison" or "Plaintiff") who was employed by MPV Event Productions, LLC, dba MVP Event Staffing ("MVP Event Staffing"), and Gregory Fielding ("Fielding") (collectively referred to as "Defendants") approximately from August 2021 until October 2021. This letter is a notice and a request pursuant to California Labor Code §2699.3 that your agency investigates the claims alleged herein. If the agency does not intend to investigate the alleged violations, we specifically and respectfully request that you notify our office.

This Action is brought by Mr. Murchison on behalf of himself and other similarly situated and aggrieved current and former employees in California ("Aggrieved Employees") working for Defendants. Plaintiff was classified as a non-exempt, hourly paid employee who worked for Defendants at various locations, including but not limited to, Angel Stadium of Anaheim, in Anaheim, California, County of Orange.

MVP EVENT STAFFING provides festival and event temporary staffing services by supplying employees to perform services for clients or customers of MVP EVENT STAFFING at various

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venues throughout California. MVP EVENT STAFFING negotiates with clients and customers for matters such as the time and place where the services of the Plaintiff and the Aggrieved Employees are/were to be provided, the type of work, the working conditions, and the quality and price of the services. MVP EVENT STAFFING determines assignment or re-assignments of the Plaintiff and the Aggrieved Employees; retains the authority to assign or reassign the Plaintiff and the Aggrieved Employees to another client or customer; sets the rate of pay for the Plaintiff and the Aggrieved Employees; pays Plaintiff and the Aggrieved Employees from its own account via Onpay platform; and retains the right to hire and terminate the Plaintiff and the Aggrieved Employees. Plaintiff and Aggrieved Employees would be assigned to various event locations contracted by Defendants. Plaintiff held various positions working for Defendants including "Stand Worker" (a cashier), taking event attendees' food and beverage orders, and also preparing food in the kitchen based on Defendants' assignment and direction.

Defendants hired the Plaintiff to provide services to MVP EVENT STAFFING clients and required Plaintiff and the Aggrieved Employees to work for Defendants promising them payment of hourly wages. Plaintiff was promised $20.00 per hour on a W2 basis; however, Defendants intentionally failed to pay the Plaintiff and the Aggrieved Employees despite repeated attempts by the Plaintiff seeking payment for his earned wages.

Defendants also promised the Plaintiff and the Aggrieved Employees that they would receive a $100.00, a non-discretionary bonus, if they worked two (2) or more days for Defendants. Plaintiff in fact worked more than 2 days for Defendants and was entitled to receive his bonus, which he did not receive.

Plaintiff would work more than 10 hours per day, usually between 12 p.m. to 10 p.m. Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done. In violation of the California Labor Code, Plaintiff and Aggrieved Employoees were not paid at least minimum wages for work done because Defendants refused to pay them.

Defendants are well aware of the number of hours worked by the Plaintiff and the Aggrieved Employees because Defendants required the Plaintiff and the Aggrieved Employees to submit timesheets, which Defendants received from their client/venue, and reconciled those timesheets to make sure they match their records. Also, when Plaintiff and the Aggrieved Employees reported to the designated parking zones for staffer employees per Defendants' direction (usually red parking zones), Defendants marked their presence on Defendants' iPad as well as their timesheets before permitting Plaintiff and the Aggrieved Employees to proceed to their work assignments. Plaintiff and the Aggrieved Employees were not compensated for the time waiting in line to be check-in and assigned to a supervisor.

Additionally, Defendants failed to pay Plaintiff and the Aggrieved Employees for paid sick leave at the employee's regular rate of pay regular rate of pay, which includes hourly and non-hourly pay, such as non-discretionary bonuses. The amount of earned but unpaid bonuses that the Plaintiff was entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code because Plaintiff was promised additional compensation as an incentive for the performance of such services to the benefit of the Defendants. Defendants unjustly reaped the benefits of the services and labor performed by Plaintiff and the Aggrieved Employees but failed to pay them for their labor.

Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and the Aggrieved Employees were not provided with all meal periods or payment of one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

Defendants knew or should have known Plaintiff and the Aggrieved Employees were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided with a compliant rest period and that Plaintiff and the Aggrieved Employees were not provided compliant rest periods or payment of one (1) additional hour of pay at their regular rates of pay when they were not provided a compliant rest period.

The Action would seek to recover penalties for the following Labor Code Violations as detailed below, based on the facts alleged above:

Labor Code §§ 200, 510, 1198, 558 Payment for Overtime:

California Labor Code § 510 codifies the right to overtime compensation and provides, in pertinent part:

> "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work 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."

California Labor Code §1194, in pertinent part, provides:

> "Notwithstanding any agreement to work for a lesser wage, 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 cost of the suit."

California Labor Code §1198, in pertinent part, provides:

> "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the

> order or under conditions of labor prohibited by the order is unlawful."

Defendants engaged in a policy and practice of suffering their employees to work more than 8 hours per day and/or forty hours in a work week by failing to compensate them overtime and double time as required by law. Therefore, Plaintiff and Aggrieved Employees were entitled to receive certain wages for overtime compensation but were not properly paid for overtime hours.

Additionally, Defendants failed to properly calculate Plaintiff's regular rate of pay for purposes of overtime compensation because the value of employee's non-discretionary bonuses were not included in the calculation of the Plaintiff's regular rate of pay in violation of Cal. Lab. Code § 510.

Defendants also violated Labor Code § 200, by failing to pay Plaintiff and Aggrieved Employees

their non-discretionary bonuses. Labor Code § 200 defines wages as,

> (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
> (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

The amount of earned but unpaid bonuses that the Plaintiff was entitled to receive constitute "wages" within the meaning of § 200 of the California Labor Code because Plaintiff was promised additional compensation as an incentive for the performance of such services to the benefit of the Defendants. Defendants unjustly reaped the benefits of the services and labor performed by Plaintiff and aggrieved Employees but failed to pay them for their labor.

Labor Code §§ 226.7 and 512: Defendants violated Labor Code § 226.7 which requires employers to provide a ten-minute rest period during each four-hour of work or major fraction thereof. Defendants further violated Labor Code § 226.7 and 512 by failing to provide Plaintiff and all other similarly situated and Aggrieved Employees with a meal period of not less than 30 minutes for each work period more than 5 hours per day and a second meal period of not less than 30 minutes for a work period of more than 10 hours-day. The meal period must be provided prior to the 5th hour of work.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Defendants required Plaintiff and other Aggrieved Employees to work during meal and rest periods and failed to compensate them properly for missed meal and rest periods, including but not limited to, failing to pay them any premium pay at their regular rate of pay which includes the non-discretionary bonus, additional wages, and/or penalties.

Labor Code §§ 201, 202, 203: California Labor Code section 201 provides that if an employer discharges an employee, the employee's wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code §203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days. Defendants willfully failed to provide Plaintiff and the Aggrieved Employees with all wages due and owing, including all regular and overtime wages, and meal and rest period premium wages as specified by Labor Code §§ 201 and 202, as alleged herein.

Defendants did not pay Plaintiff, and all similarly situated Aggrieved Employees' wages were due when Defendants terminated their employment. Defendants willfully failed and refused, and continue to willfully fail and refuse, to timely pay compensation and wages, including overtime payments, and premiums for meal and rest periods, and non-discretionary bonuses as described above. As a result, Defendants are liable for wages due, interest, and waiting time penalties, any other statutory penalties, other damages together with attorneys' fees and costs.

Lab Code §§201.3, and 210: Lab. Code § 201.3(b) provides that "if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision."

Lab. Code § 210(a) provides "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3 …. shall be subject to a penalty as follows:

> (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee.
>
> (2) 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."

Defendants intentionally refused to comply with Lab Code §201.3; therefore, subject to penalties.

Labor Code §§ 226, and 226.3: Labor Code 226 requires employers to maintain accurate records for each employee's hours of work and to provide each employee with an accurate wage statements in writing setting forth, among other things: gross wages earned; total hours worked by the employee; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions made, and the name and address of the legal entity of the employer

Defendants engage in a policy and practice of willfully and intentionally failing to furnish their employees with accurate itemized wage statements in compliance with the statutory requirement of §226(a). During the Relevant Time Period, Defendants knowingly and intentionally failed to provide to the Plaintiff and the Aggrieved Employees, the above described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, and all wages earned.

All the above violations, were suffered by Plaintiff and all other similarly situated and Aggrieved Employees working for Defendants in California daily as a result of Defendants' uniform policies and practices, and managerial instructions. Defendants knowingly, intentionally and willfully refused and continue to refuse to comply with California law.

Labor Code §§ 246(a), 246(i), 246.5(a), 247.5 and 233: Labor Code 246(a) requires an employer to provide employees that work in California on or after July 1, 2015, for 30 or more days within a year from the commencement of employment, paid sick days to accrue at a rate of not less than one hour per every 30 hours worked. or in the alternative must comply with the requirements of section 246(b)(3).

Section 246(i) requires an employer to provide an employee with written notice that sets forth the amount of paid sick leave ***available***, or PTO leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement as described in Section 226 or in a separate writing provided on the designated pay date with the employees' payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee' s itemized wage statement "unlimited."

Section 246(l) provides: For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

> (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.
>
> (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Defendants failed to comply with Labor Code § 246(l)(1)-(2), by failing to pay Aggrieved Employees paid sick leave at the employee's regular rate of pay, which is based on a weighted average of all rates the employee earned, including bonuses. Employers may calculate the regular rate of pay either based on the workweek in which the employee uses sick leave or by using a 90-day look back period; Defendants failed to do so.

Lab Code § 247.5: Defendants failed to maintain records documenting Plaintiff's and the Aggrieved Employees accrued and used sick leave in violation of Labor Code § 247.5(a).

Specifically, Labor Code Labor Code § 247.5 states:

> (a) An employer shall keep for at least three years records documenting the hours worked and paid sick days accrued and used by an employee, and shall allow the Labor Commissioner to access these records pursuant to the requirements set forth in Section 1174 . An employer shall make these records available to an employee in the same manner as described in Section 226. If an employer does not maintain adequate records pursuant to this section, it shall be presumed that the employee is entitled to the maximum number of hours accruable under this article, unless the employer can show otherwise by clear and convincing evidence.

Labor Code § 2810.5: The California Wage Theft Prevention Act of 2011 ("WTPA") became effective on January 1, 2012. Among other provisions, the WTPA adds section 2810.5 to the California Labor Code. The act requires that all employers provide each employee with a written notice containing specified information. The notice must be in the language the employer normally uses to communicate employment-related information to the employee. Specifically, employers are required to provide each employee, at the time of hiring, with a written notice containing the following information: (1) the rate or rates of pay "and basis thereof," whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; (2) allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; (3) the regular payday designated by the employer in accordance with the requirements of the Labor Code; (4) the name of the employer, including any "doing business as" names used by the employer; (5) the physical address of the employer's main office or principal place of business, and a mailing address, if different; (6) the telephone number of the employer; (7) the name, address, and telephone number of the employer's workers' compensation insurance carrier; and (8) any other information the Labor Commissioner deems material and necessary.

Plaintiff was a non-exempt employee entitled to notice pursuant Cal. Lab. Code § 2810.5. Cal. Labor Code § 2810.5 is aimed at informing employees about such fundamental and material information concerning their pay and rates of pay under an employment relationship. Defendants willfully, and intentionally failed to comply with the requirements of Cal. Lab. Code § 2810.5.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned violations. We look forward to hearing from you whether the agency intends to take any action in reference to these violations.

Sincerely,

Natalie Mirzayan, Esq.
Attorney for Domingo Murchison and Aggrieved Employees