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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Elizabeth Reyes, Deputy Clerk

Attorneys for Plaintiff JUAN CASTANON, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JUAN CASTANON, on behalf of himself and
all others aggrieved employees,

Plaintiff,

v.

HARCON PRECISION METALS, INC., a
Corporation Doing Business in California; and
DOES 1- 50, Inclusive,

Defendant,

Case No.: 37-2022-00016813-CU-OE-CTL

COMPLAINT

**1. Civil Penalties under the Private
Attorneys General Act (PAGA)**

Plaintiff, JUAN CASTANON ("Plaintiff"), as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and all other current and former employees, complains and alleges as follows:

1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of himself and all other Aggrieved Employees, to
4 collect civil penalties for Defendant's Labor Code violations.

5 2. Defendant and employer, HARCON PRECISION METALS, INC. ("Defendant"
6 or "Harcon") violated numerous wage and hour laws with respect to Plaintiff and other
7 Aggrieved Employees by failing to provide, for example: accurate and itemized wages
8 statements, payment for all hours worked (including regular wages and overtime), failure to
9 provide a minimum wage lawful meal periods, lawful rest periods, timely payment during
10 employment, failure to reimburse for expenses incurred during the course and scope of
11 employment, and payment upon separation of employment.

12 **PARTIES**

13 **The Plaintiff**

14 3. Plaintiff JUAN CASTANON ("Plaintiff" or "CASTANON") is and at all times
15 mentioned herein, was, a resident of the County of San Diego, State of California.

16 4. Similarly aggrieved, former and/or current employees are those non-exempt
17 employees holding various positions who experienced some if not all of the violations set forth
18 in Plaintiff's PAGA Notice filed with the LWDA on or about February 22, 2022 (hereinafter
19 "Aggrieved Employees").

20 **The Defendant**

21 5. Defendant HARCON PRECISION METALS, INC. ("Defendant" or "Harcon" or
22 "Employer"), is a corporation which, at all-time relevant hereto, existing, doing business and
23 employing individuals in the County of San Diego, State of California.

24 6. The true names and capacities, whether individual, corporate, associate, or
25 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
26 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
27 amend this Complaint to insert the true names and capacities of said Defendants when the same
28 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of

1 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
2 therefore liable to Plaintiff as alleged hereinafter.

3 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
4 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
5 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
6 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
7 least in part within the course and scope of said agency, employment, conspiracy, joint
8 employment, alter ego status, and/or joint venture and with the permission and consent of each of
9 the other Defendants.

10 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
11 and each of them, including those Defendants named DOES 1-50, acted in concert with one
12 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
13 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
14 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
15 each of them, including those Defendants named as DOES 1-50, formed and executed a
16 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
17 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
18 to and actually causing Plaintiff harm.

19 9. Whenever and wherever reference is made in this Complaint to any act or failure
20 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
21 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.
22

23 **JURISDICTION AND VENUE**

24 10. Venue is proper in San Diego County, because Defendant maintain its locations
25 and transacts business in this county, the obligations and liability primarily arise in this county,
26 and work was primarily performed by Plaintiff and other Aggrieved Employees in this county.

27 11. The California Superior Court has jurisdiction over this matter. The individual
28 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for

1 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
2 amount required for diversity removal. Further, there is no federal question at issue as the issues
3 herein are based solely on California statutes and law, including, but not limited to, the California
4 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
5 and California Rules of Court.

6 **GENERAL ALLEGATIONS**

7 12. Defendant employed Plaintiff as an assembler in the upholstery department from
8 about February 2016 to about June 4, 2021 when Plaintiff was allegedly laid off. Plaintiff's
9 general duties included assembling and reupholstering furniture parts such as the sponge,
10 cushion, and metal components. On occasions, Defendant would send Plaintiff would work in
11 other departments such as serving as a driver for Defendant.

12 13. At all relevant times herein, Defendant employed Plaintiff and other Aggrieved
13 Employees as non-exempt employees.

14 14. Plaintiff is informed and believes that on many occasions, Plaintiff and Aggrieved
15 Employees would work more than 8 hours per day or 40 hours per week without lawful
16 compensation and/or overtime pay. Plaintiff is further informed and believes that Plaintiff and
17 Aggrieved Employees were not compensated for all compensable time worked. For example,
18 Plaintiff believes that he and Aggrieved Employees were subject to an unlawful time rounding
19 policy for their compensable work time. In particular, Plaintiff is informed and believes that
20 Plaintiff and Aggrieved Employees' wage statements show Aggrieved Employees' time was
21 rounded to the nearest quarter which does not accurately reflect and account for all compensable
22 time worked by Plaintiff and Aggrieved Employees. Plaintiff is informed and believes that if an
23 employee clocks in one or two minutes late, Defendant will automatically deduct 10-15 minutes
24 of wages, thereby, depriving Plaintiff and Aggrieved Employees of all wages earned. As a result
25 of this unlawful time rounding policy and unlawful deduction of wages, Plaintiff and Aggrieved
26 Employees were not compensated for all unpaid, regular, minimum, and overtime pay.

27 15. Plaintiff is informed and believes and thereon alleges that Defendant regularly
28

1 did not have enough employees to provide sufficient coverage to maintain their business
2 operations so that Plaintiff and similarly Aggrieved Employees could not take complete, timely
3 and uninterrupted meal and rest breaks.

4 16. In particular, Defendant operated a bell system for meal and rest periods in which
5 Defendant required all employees to return to their working stations *prior* to the ringing of the
6 last bell marking the end of the 30-minute meal break or the end of the 10-minute rest break,
7 such that Plaintiff and Aggrieved Employees did not receive the full statutory 30-minute meal
8 break and the full statutory 10-minute rest break in violation of the Labor Code.

9 17. Plaintiff is informed and believes and thereon alleges that Plaintiff and Aggrieved
10 Employees did not receive their meal breaks within the first five (5) hours of their shift as
11 required by the Labor Code. Plaintiff is further informed that Defendant did not have enough
12 employees to provide sufficient coverage such that Aggrieved Employees could not take
13 complete uninterrupted meal or rest breaks.

14 18. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
15 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
16 departments, divisions, commissions, boards, agencies or employees for violation of the code
17 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
18 behalf of himself or herself and other current or former employees pursuant to the procedures
19 specified in Labor Code section 2699.3.

20 19. For all provisions of the Labor Code except those for which a civil penalty is
21 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a
22 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
23 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
24 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

25 20. Defendant's conduct during the PAGA period with respect to Plaintiff and the
26 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

27 21. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
28

1 hour violations under the California Labor Code and IWC Wage Orders.

2 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
3 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
4 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
5 they were not receiving all wages earned for work that was required to be performed. In violation
6 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
7 Employees' for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
8 Employees all earned minimum, regular, and/or overtime compensation.

9 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
10 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
11 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
12 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
13 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
14 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
15 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendant's
16 unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods
17 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
18 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

19 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
21 required rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
22 employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
23 period. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
24 and policy of not providing timely rest periods. Defendant failed to pay an additional hour of
25 pay to Plaintiff and aggrieved employees for each rest periods was not provided or was
26 interrupted. As a result of Defendant's unlawful policy and practice, Plaintiff and aggrieved
27 employees did not receive all requited rest periods or payment of one (1) additional hour of pay
28

1 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
2 uninterrupted 10 minute off-duty rest period.

3 25. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
4 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
5 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
6 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
7 time periods, upon separation of employment.

8 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
9 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
10 wage statements that accurately showed their actual hours worked, total hours worked, number
11 of hours worked at each hourly rate, gross and net wages earned, and correct employer
12 information in accordance with California law. In violation of the Labor Code, Plaintiff and
13 Aggrieved Employees were not provided with accurate itemized wage statements that accurately
14 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
15 effect during the pay period with the corresponding number of hours worked, and the address of
16 the legal entity that is the employer, among other things.

17 27. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
18 should have known that Defendant was required to maintain accurate records of the hours
19 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendant failed
20 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
21 unfair rounding practices, among other things.

22
23 **FIRST CAUSE OF ACTION**

24 **(Civil Penalties Under the Private Attorneys General Act,**
25 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

26 28. Plaintiff realleges and incorporates by reference each and every allegation set
27 forth in the preceding paragraphs above as though set forth in in full herein.

28 29. By this complaint, Plaintiff brings this case as a representative action seeking

1 penalties for himself, the Aggrieved Employees, and the State of California in a representative
2 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
3 employee who was employed by Defendant and subject to at least one of the Labor Code
4 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
5 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
6 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

7 30. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
8 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
9 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
10 not to investigate, or after 65 days have passed without notice from the LWDA.

11 31. Prior to filing this complaint, on February 22, 2022, Plaintiff gave written notice
12 of the specific provisions alleged to have been violated, including the facts and theories to
13 support the alleged violations, as required by Labor Code section 2699.3 (“PAGA notice”). The
14 written notice was given via certified mail to Defendant, and the LWDA by electronically filing
15 the notice via the Department of Industrial Relations (“DIR”) website. Plaintiff was given an
16 LWDA case number of LWDA-CM-869492-22. A true and correct copy of Plaintiff’s PAGA
17 notice to the LWDA and Defendant(s) dated February 22, 2022 is attached hereto as **Exhibit A**
18 and incorporated herein by reference.

19 32. The LWDA has not provided Plaintiff with any notice that it intends to investigate
20 the violations as alleged in Plaintiff’s PAGA Notice, and more than 65 calendar days have
21 elapsed since the postmark date of the PAGA Notice.

22 33. On or about March 24, 2022, Defendant sent a letter to the LWDA to cure the
23 violations set forth in Plaintiff’s PAGA Notice.

24 34. On or about April 21, 2022, the LWDA issued a letter titled “Decision on Cure
25 Dispute” concluding that Defendant “has not shown a cure of any violation alleged in
26 [Plaintiff’s] PAGA Notice.” Therefore, pursuant to Labor Code section 2699.3(c)(3), Plaintiff
27 may proceed with the civil action. A true and correct copy of the LWDA’s “Decision on Care”
28

1 is attached hereto as **Exhibit B** and incorporated by reference herein.

2 35. California Labor Code §§2698-2699.5, in relevant part provides, “any provision
3 of this code that provides for a civil penalty to be assessed and collected by the Labor and
4 Workforce Development Agency...for a violation of this code, may, as an alternative, be
5 recovered through a civil action brought by an aggrieved employee on behalf of himself or
6 herself and other current or former employees pursuant to the procedures specified in Section
7 2699.3.”

8 36. As an aggrieved employee, Plaintiff brings this civil action to recover civil
9 penalties for Defendant’s Labor Code violations.

10 **FIRST VIOLATION**

11 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

12 37. Plaintiff realleges and incorporates by reference each and every allegation set
13 forth in the preceding paragraphs above as though set forth in full herein.

14 38. Under California Labor Code §512(a), “An employer may not employ an
15 employee for a work period of more than five hours per day without providing the employee
16 with a meal period of not less than 30 minutes, except that if the total work period per day of the
17 employee is no more than six hours, the meal period may be waived by mutual consent of both
18 the employer and employee.”

19 39. Defendant violated Labor Code § 512 by failing to provide Plaintiff, and other
20 qualifying employees who worked shifts of greater than five hours, meal periods within the first
21 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour’s pay at Plaintiff’s
22 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
23 section 512.

24 **SECOND VIOLATION**

25 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

26 40. Plaintiff realleges and incorporates by reference each and every allegation set
27 forth in the preceding paragraphs as though set forth in full herein.

28 41. Under California Labor Code §226.7(b), “An employer shall not require an

1 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
2 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

3 42. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
4 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
5 of each work period. The authorized rest period time shall be based on the total hours worked
6 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

7 43. Defendant failed to authorize and permit Plaintiff and other employee to take rest
8 periods and mandated by the Wage Order.

9 44. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
10 one additional hour of pay at the employee’s regular rate of compensation for each workday that
11 the meal or rest or recovery period is not provided.”

12 45. Defendant failed to pay Plaintiff and other employees who were not provided rest
13 periods one hour of pay at their regular rate of pay.
14

15 **THIRD VIOLATION**

16 **(Failure to Provide Complete and Accurate Wage Statements,**
17 **in Violation of Labor Code Section 226)**

18 46. Plaintiff realleges and incorporates by reference each and every allegation set
19 forth in all of the preceding paragraphs above as though set forth in full herein.

20 47. Under California Labor Code §226(a), an employer is legally obligated to provide
21 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
22 in writing...”

23 48. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
24 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
25 Labor Code § 2699.

26 **FOURTH VIOLATION**

27 **(Failure to Pay Overtime Wages)**

28 49. Plaintiff realleges and incorporates by reference each and every allegation set
forth in all of the preceding paragraphs above as though set forth in full herein.

50. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an employer is required to compensate employees for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

51. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

FIFTH VIOLATION

(Failure to Pay Minimum Wages)

52. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs as though set forth in full herein.

53. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

54. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

SIXTH VIOLATION

(Failure to Timely Pay Wages During Employment)

55. Plaintiff realleges and incorporates by reference each and every allegation set forth in all of the preceding paragraphs above as though set forth in full herein.

56. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, an employer is required to pay its employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar

1 month, Defendants are required to pay their employees between the 1st and 15th day of the
2 following calendar month. In addition, California Labor Code § 204 provides that all wages
3 earned for labor in excess of the normal work period shall be paid no later than the payday of the
4 next regular payroll period.

5 57. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
6 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
7 Labor Code § 2699.

8 **SEVENTH VIOLATION**

9 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

10 58. Plaintiff realleges and incorporates by reference each and every allegation set
11 forth in all of the preceding paragraphs above as though set forth in full herein.

12 59. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
13 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
14 201 mandates that if an employer discharges an employee, the employee's wages accrued and
15 unpaid at the time of discharge are due and payable immediately.

16 60. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
17 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
18 Labor Code § 2699.

19 **EIGHTH VIOLATION**

20 **(Failure to Reimburse Business Expenses)**

21 61. Plaintiff realleges and incorporates by reference each and every allegation set
22 forth in the preceding paragraphs as though set forth in full herein.

23 62. Labor Code section 2802 provides that an employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
26 the employer.

27 63. Plaintiff is informed and believes that Defendant failed to indemnify Plaintiff and
28

1 Aggrieved Employees for all necessary expenditures or losses incurred by Plaintiff and
2 Aggrieved Employees in direct consequence of the discharge of their duties. For example,
3 Plaintiff had to use his personal cellphone for work purposes. Plaintiff is informed and believes
4 that other Aggrieved Employees also had to use their personal cellphones for work purposes. In
5 violation of the Labor Code, Defendant failed to reimburse Plaintiff and Aggrieved Employees
6 for these business-related expenditures.

7 64. By virtue of Defendant's unlawful actions, Plaintiff and Aggrieved Employees
8 have suffered, and will continue to suffer, damages in amounts which are presently unknown,
9 but will be ascertained according to proof at trial.

10 65. Plaintiff seeks recovery of civil penalties individually, on behalf of the Aggrieved
11 Employees and the State of California for violations of Labor Code section 2802 during the
12 PAGA period, in a sum as provided by the Labor Code and/or other statutes. Plaintiff, individual,
13 and on behalf of the Aggrieved Employees and the State of California also seeks attorney's fees
14 and costs pursuant to Labor Code section 2699, subdivision (g) and Code of Civil Procedure
15 section 1021.5.
16

17
18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff prays for the following relief:

- 20 1. For penalties in an amount according to proof;
21 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
22 3. For such other and further relief as this Court may deem just and proper.
23

24 Respectfully Submitted,

25 Dated: May 3, 2022

WORK LAWYERS, PC

26
27 By: 

Justin Lo, Esq.

Attorney for Plaintiff JUAN CASTANON
28

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Lab. Code, § 2699.3)

DATE February 22, 2022

DELIVERY Online Filing and Certified U.S. Mail

RECIPIENTS California Labor &
Workforce Development Agency
PAGAfilings@dir.ca.gov

John Atkinson
Agent for Service of Process
1790 Dornoch CT
San Diego, CA 92154

Harcon Precision Metals, Inc.
Human Resources/Legal Dept.
1790 Dornoch CT
San Diego, CA 92154

Timothy G. Williams, Esq.
Berger, Williams & Reynolds, LLP
401 B. Street, Suite 2000
San Diego, California 92101

SUBJECT JUAN CASTANON v. HARCON PRECISION METALS, INC. —NOTICE OF LABOR CODE
VIOLATIONS UNDER CAL. LABOR CODE 2699.3

Dear PAGA Administrator:

This office represents JUAN CASTANON (“Complainant”) in connection with claims under the California Labor Code. Complainant is a former employee of HARCON PRECISION METALS, INC., a corporation doing business in California (“Employer” or “Harcon”). Pursuant to Labor Code section 2699.3, subdivision (a), we are providing written notice that Employer is in violation of various provisions of the California Labor Code.

Office: (424) 355-8335
E-Mail: justin@caworklawyer.com
22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505

Complainant intends to file a complaint against Employer in California Superior Court pursuant to Labor Code section 2699 on behalf of himself and all Aggrieved Employees within one year of the filing of the original PAGA notice.

“Aggrieved Employees” are all non-exempt workers employed by Employer holding various positions who experienced some if not all of the violations set forth in this notice.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, employer is on notice that Complainant continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If Employer intends to cure the alleged violations within the statutory time period set forth in Labor Code sections 2699(d) and 2699.3(c), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

The Employer

Employer and its agents own, operate, or otherwise manage a business known as Harcon Precision Metals, Inc. According to the California Secretary of State’s website, Employer is a business registered in California on July 27, 2004

Employer may be contacted directly through its agent for service of process at:

**John Atkinson
Agent for Service of Process
1790 Dornoch CT
San Diego, CA 92154**

The business and mailing address listed for Employer with the California Secretary of State is as follows:

Harcon Precision Metals, Inc.
Human Resources/Legal Dept.
1790 Dornoch CT
San Diego, CA 92154

Complainant believes and hereon alleges that Employer employs, at a minimum, 100 or more Aggrieved Employees who are non-exempt employees at its California locations at any given time. Specifically, it is believed that at any given time Employer has approximately 100 or more persons employed and working as assemblers within California, with additional employees in other positions within California.

Factual Background

Complainant was employed by Employer from approximately February 2016 to about June 4, 2021, as an assembler in the upholstery department or other like positions in California. Complainant's general duties included assembling and reupholstering furniture parts such as the sponge, cushion, and metal components. On occasions, Complainant would work in other departments such as being a driver of company truck when it was short-staffed.

This position required Complainant to work more than 8 hours a day and/or 40 hours per week without lawful compensation.

Complainant is informed and believes that Complainant and Aggrieved Employees were subject to an unlawful rounding policy for their compensable work time. In particular, Complainant's time was rounded to the nearest quarter which does not accurately reflect and account for all compensable time worked by Complainant and Aggrieved Employees. In particular, Complainant is informed and believes that if an employee clocks in one or two minutes late, the Employer automatically deducts 10-15 minutes of wages. Therefore, Complainant is informed and believes that due to this unlawful time rounding policy, among others, Complainant and Aggrieved Employees were not compensated for all compensable time worked, resulting in unpaid regular, minimum and overtime pay.

Complainant has made a formal request to the Employer and its counsel of record for inspection and production of Complainant's employment records including personnel records and time and

wage records pursuant to Labor Code §§ 226 and 1198.5. However, despite the expiration of the statutory period for Employer to comply with §§ 226 and 1198.5, Employer failed to produce Complainant's employment records in violation of the Labor Code—making it difficult for Complainant to determine the amount he was paid and the amount of time he was paid for.

Complainant is further informed and believes that Complainant and Aggrieved Employees were regularly not paid for minimum and overtime wages for all compensable work time spent under the control of Employer. Complainant is informed and believes that Employer failed to pay wages (regular, minimum, and overtime) when productivity standards required Aggrieved Employees to work overtime but Employer's supervisors refused to approve the overtime worked.

Employer failed to authorize and permit all required meal and rest periods for Complainant and Aggrieved Employees because, upon information and belief, Employer maintained unlawful meal and rest period policies and practices. In particular, among others, Employer maintained and operated a bell system for meal and rest periods in which the Employer required all employees to return to their working stations *prior* to the ringing of last bell marking the end of the 30-minute meal break and the 10-minute rest break, such that Complainant and Aggrieved Employees did not receive the full statutory 30-minute meal break and 10-minute rest break. Complainant is informed and believes that Complainant and Aggrieved Employees did not receive their meal break within the first five hours of their shift as required by the Labor Code or did not receive a second meal break after the tenth hour of their shift.

In addition, Complainant is informed and believes that Employer regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Complainant and Aggrieved Employees could not take complete, timely and uninterrupted meal and rest breaks. Employer failed to provide Complainant and aggrieved employees with an additional hour of premium pay at the regular rate of pay for each rest period violation, as required by Labor Code section 226.7.

Complainant is informed and believes that Employer failed to reimburse Complainant and Aggrieved Employees for all expenses incurred in the direct discharge or performance of their work duties. Complainant and Aggrieved Employees were required to use their personal cellular telephones and internet connection to perform their job duties. Complainant and Aggrieved Employees did not receive any reimbursement for these expenses.

As a result of the above-described violations, Employer failed to provide Complainant and Aggrieved Employees with accurate itemized wage statements in writing. In particular, the

wage statements do not accurately reflect all compensable time worked by Complainant and Aggrieved Employees and all meal and rest break premiums that were supposed to be paid for meal and rest break violations.

Legal Violations

At all relevant times, Complainant and Aggrieved Employees were non-exempt employees working for Employer. At all relevant times, Complainant was an Aggrieved Employee as defined in Labor Code section 2699, subdivision (c). (Lab. Code, § 2699, subd. (c) [“any person who was employed by the alleged violator and against whom one or more of the violations was committed”].)

Complainant’s employment resulted in numerous violations of the California Labor Code, including the following:

- ▶ Employer failed to keep accurate and complete time records for Complainant and Aggrieved Employees. (Lab. Code, §§ 1174, 1198, 1199; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) [“Every employer shall keep accurate information with respect to each employee including the following: . . . Time records showing when the employee begins and ends each work period.”].)
- ▶ Employer failed to pay Complainant and Aggrieved Employees for all hours worked. (Lab. Code, § 1197; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324 [an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage].)
- ▶ Employer failed to pay Complainant and Aggrieved Employees at least minimum wage for all hours worked or overtime rates for overtime work. (Lab. Code, §§ 1194, 1197, 1197.1.)
- ▶ Employer failed to pay Complainant and Aggrieved Employees overtime equal to one and one-half times their regular hourly rate of pay for each hour worked beyond eight

(8) hours per workday and each hour worked beyond forty (40) hours per work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)

- ▶ Employer failed to pay Complainant and Aggrieved Employees overtime equal to double their regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. (Lab. Code §§ 510, 1198–1199; Cal. Code Regs., tit. 8, § 11040, subd. 3.)
- ▶ Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ▶ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper meal periods. (Lab. Code, §§ 226.7, 512, subd. (a); Cal. Code Regs., tit. 8, § 11040, subd. 11.)
- ▶ Employer failed to maintain a company rest break policy compliant with California law and failed to provide Complainant and other Aggrieved Employees with proper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ▶ Employer failed to properly compensate Complainant and Aggrieved Employees with an additional hour of premium pay for missed or improper rest breaks. (Lab. Code, § 226.7; Cal. Code Regs., tit. 8, § 11040, subd. 12.)
- ▶ Employer failed to properly record Complainant and Aggrieved Employees' meal periods as required by Labor Code section 1198 and applicable IWC Wage Orders. (Lab. Code, § 1198; Cal. Code Regs., tit. 8, § 11040, subd. 7(A)(3) ["Meal periods, split shift intervals and total daily hours worked shall also be recorded."].)

- ▶ Employer failed to pay Complainant and Aggrieved Employees all wages earned by Complainant and Aggrieved Employees on at least semimonthly paydays. (Labor Code, §§ 204, subd. (a), 207.)
- ▶ Employer took improper deductions from the pay of Complainant and Aggrieved Employees. (Lab. Code, § 221–224, 2802.)
- ▶ Employer refused to make and/or falsely denied the amount of payments due to Complainant and Aggrieved Employees. (Lab. Code, § 216; see also Lab. Code, §§ 1174, 1197, 1197.1, 1198, 1199, 2699.)
- ▶ Employer intentionally and willfully failed to provide proper and accurate wage statements to employees Complainant and Aggrieved Employees. (Lab. Code, §§ 226, subd. (a), 226.3, 226.6.) The deficiencies include, among other things, the legal entity employing Complainant and Aggrieved Employees, the failure to correctly identify the total hours worked, the gross wages, and correct hourly rate earned by Complainant and Aggrieved Employees.
- ▶ Employer failed to provide proper notices regarding employee pay to Complainant and Aggrieved Employees. (Lab. Code, § 2810.5.)
- ▶ Employer failed to pay employees all earned and unpaid wages when they separated/separate from employment. (Lab. Code, §§ 201, 202, 203, 210.)
- ▶ Employer refused to reimburse Complainant and Aggrieved Employees for all expenses incurred during the course and scope of their employment. (Lab. Code, § 2802.)

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest,

attorneys' fees, and costs. Complainant and other Aggrieved Employees seek to recover those amounts.

Conclusion

Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency ("LWDA") setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code sections 2699 and 2699.3, subdivision (a), prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the Labor Commissioner or LWDA elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of himself and all other California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within **sixty (60) days** of this notice to our office and to that of other charged parties.

If you have any questions, please contact me at the phone number or address below:

Justin Lo
Work Lawyers PC
22939 Hawthorne Boulevard, Suite 202
Torrance, California 90505
Tel: (424) 355-8335
Email: Justin@caworklawyer.com

///

Thank you for your attention to this matter. I look forward to hearing from you at your earliest convenience.

Sincerely,


JUSTIN LO



Work Lawyers PC <info@caworklawyer.com>

Thank you for submission of your PAGA Case.

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

Tue, Feb 22, 2022 at 12:58 PM

2/22/2022

LWDA Case No. LWDA-CM-869492-22
Law Firm : Work Lawyers, P.C.
Plaintiff Name : Juan Castanon
Employer: Harcon Precision Metals, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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John Atkinson
Agent for Service of Process
1790 Dornoch CT
San Diego, CA 92154

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2/22/22
PAGA Notice
Juan Castanon

Box No.

City, State, ZIP+4®

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Timothy G. Williams, Esq.
Berger, Williams & Reynolds, LLP
401 B. Street, Suite 2000
San Diego, California 92101

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Joa Costanera

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Human Resources/Legal Dept.
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San Diego, CA 92154

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PS Form 3800, April 2015 PSN 7530-02-000-9047

EXHIBIT B



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom – SECRETARY Natalie Palugyai

Agricultural Labor Relations Board – California Unemployment Insurance Appeals Board
California Workforce Investment Board – Department of Industrial Relations
Employment Development Department – Employment Training Panel – Public Employment Relations Board

April 21, 2022

Justin Lo
May T. To
Work Lawyers PC
22939 Hawthorne Blvd., Suite 202
Torrance, California 90505
Certified #: 9489 0090 0027 6347 3615 03
Timothy G. Williams
Berger, Williams & Reynolds, LLP
401 B Street, Suite 2000
San Diego, California 92101
Certified #: 9489 0090 0027 6347 3614 97

Re: *Juan Castanon v. Harcon Precision Metals, Inc.*
LWDA Case No.: LWDA-CM- 869492-22

Decision on Cure Dispute

PLEASE TAKE NOTICE that the Labor & Workforce Development Agency (“LWDA”), through one or more of its departments, divisions, commissions, boards, or agencies, has reviewed Juan Castanon’s (“Claimant’s”) February 22, 2022 Private Attorneys General Act (“PAGA”) Notice against Harcon Precision Metals, Inc. (“Respondent” or “Harcon”); Respondent’s March 24, 2022 cure notice and response to Claimant’s PAGA notice; and Claimant’s April 7, 2022, cure dispute notice; and has determined as follows.

I. Background

On February 22, 2022, Claimant submitted a PAGA Notice to the LWDA. In Claimant’s PAGA Notice, Claimant asserts, *inter alia*, that Respondent allegedly has violated Labor Code sections 201, 202, 203, 204, 207, 210, 216, 221-224, 226, 226.3, 226.6, 226.7, 510, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802 and 2810.5, and California Code of Regulations, title 8, section 1040.¹

In its March 24, 2022, cure notice and response, Respondent states, *inter alia*, that it had not violated sections 226 and 1198.5. More specifically, Respondent states that on December 8, 2021, Mr. Castanon, through a different law firm than Work Lawyers PC, made a written request for copies of his personnel file and payroll records to Harcon. Respondent further states that on

¹ Unless otherwise specified, all statutory references are to the Labor Code.

January 6, 2022, it responded and produced the requested records to the law firm that made the December 8, 2021, request. Respondent states that in the meantime, on December 13, 2021, Work Lawyers PC sent a second letter to Respondent requesting copies of Mr. Castanon's personnel file and payroll records. Respondent further states that by the time that letter was received, copying and production to Mr. Castanon through his first law firm was underway, and eventually completed, as stated above, on January 6, 2022.

Respondent further states that on February 15, 2022, Berger, Williams & Reynolds, LLP confirmed to Work Lawyers PC that Harcon had produced records to Mr. Castanon through his first counsel's request, on January 6, 2022. Respondent argues that no other potential corrections or cures could be required because no further or continuing obligation to produce records exists, referencing Labor Code sections 226(b), (c) & 1198.5(b)-(f). Respondent argues that, accordingly, it has not violated Labor Code section 226 or section 1198.5.

In his cure dispute, Claimant alleges that Respondent has not complied with Claimant's request for personnel records pursuant to Labor Code sections 226 and 1198.5. Claimant further states that Respondent can comply with its obligation by emailing the records to Work Lawyers PC's office and cc'ing the LWDA as proof that Defendant complied with the Labor Code. LWDA has not received Claimant's records.

II. There Has Not Been a Sufficient Showing that Any Alleged Violation Has Been Cured

Labor Code 2699(d) provides, in part, that, "[f]or purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole."

Respondent states that it did not violate the Labor Code provisions requiring that it provide the requested records to Claimant, because it had produced the records to Claimant's prior counsel. The cure process is not a means for obtaining a decision as to whether any violations ever existed.

In addition, Claimant alleges that Respondent still has not fully complied with the provisions of sections 207, 226(b) 1198.5 and/or 2810.5. Respondent alleges that it has complied. There is a dispute of facts that LWDA cannot resolve here.

Accordingly, LWDA finds that there has not been a sufficient showing that any alleged violations have been cured.

III. Employee Notices and Postings

In its response, Respondent also states that it has maintained and provided proper employee notices and postings. There are no allegations that any actions regarding notices and postings were undertaken as an attempted cure. Rather, the argument is that there never were violations. As stated above, the cure process is not a means for obtaining a finding that no violations ever existed.

In addition, Labor Code section 2699(g)(2) provides that, “(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.” In light of this provision, it is questionable as to whether the allegations in this matter regarding postings and notices are a permissible basis for setting forth a PAGA claim or subject to any PAGA cure provisions.

IV. Conclusion

In light of the parties’ submissions, the LWDA determines that Harcon Precision Metals, Inc. has not shown a cure of any violation alleged in Juan Castanon’s PAGA Notice. The LWDA takes no position on the merits of any alleged violation, including on whether any violations ever existed.

If you have questions concerning this decision, please send an email to PAGAinfo@dir.ca.gov or call the PAGA Unit at (510) 286-1340.

Sincerely,

/s/ Patricia M. Kelly

Patricia M. Kelly, Attorney
Division of Labor Standards Enforcement