STANSBURY BROWN
LAW PC

February 7, 2025

<u>VIA LWDA WEBSITE</u>

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ramon Leon v. Glesby Building Materials Company, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Ramon Leon ("Mr. Leon") in claims for Labor Code violations arising from his employment with Glesby Building Materials Company, Inc.; and DOES 1 through 100 (collectively referred to herein as "Employers"). Mr. Leon is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Employers' numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency ("LWDA") of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, the "aggrieved employees" whom Mr. Leon seeks to represent are the other non-exempt employees of Employers who performed work in California at any time during the one year preceding the date of this letter through the present.

Mr. Leon started his employment with Employers approximately April 17, 2017, and was employed until approximately May 31, 2024. Mr. Leon worked as a delivery driver, delivering Glesby's building materials to various stores and other locations. He performed additional tasks such as loading, strapping down, and unloading materials from the delivery truck. Employers are in the construction industry and manufacture the building materials Mr. Leon was tasked with delivering. He was generally scheduled to work for 5 days per week, Monday through Friday, for up to 12 hours or more per day, with his shift starting at 4:00am and continuing up till as late as 4:00pm or longer, depending on the number and locations of his assigned deliveries on any given day.

Throughout the duration of Mr. Leon's employment with Employers, Mr. Leon and other aggrieved employees were not paid for all hours worked as Employers did not accurately keep track of all hours worked. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Mr. Leon and other aggrieved employees actually worked. Employers required Mr. Leon and other aggrieved employees to clock in and out at a specific physical location. Depending on the route and number of deliveries in any given day, Mr. Leon would often be required to work shifts in excess of 8, 10 or 12 hours. However, he was never paid more than 1.5 hour for overtime pay calculations, and these calculations were further inaccurate because they uniformly failed to include Mr. Leon and other aggrieved employees' annual bonus in the "regular rate" of pay calculations. Moreover, Mr. Leon alleges on information and belief that Employers utilized an unlawful one-way rounding policy, which rounded employee time punches to the quarter-hour, which systemically caused employees to be paid for less time than they actually worked.

Employers also routinely did not provide Mr. Leon and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours. Instead of clocking in and out after receiving a full and uninterrupted 30 minute meal period, on every shift, Mr. Leon and other non-exempt employees would take a meal period if and when time permitted, as the demands and time restrictions of their assigned routes often made timely and complete, uninterrupted 30-minute meal periods impossible. Moreover, Employers failed to authorize second meal periods when employees worked over 10.0 hours. Despite Employers' failure to authorize and permit Mr. Leon and other non-exempt employees to take all lawful paid meal periods, due to their uniform and unlawful practices, Employers never provided Mr. Leon and other non-exempt employees with an additional hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of meal period premiums in the event Mr. Leon and other non-exempt employees were not authorized to take lawful meal periods.

Similar to the meal period violations noted above, Employers also did not authorize Mr. Leon and other aggrieved employees to take all legally required rest periods. Specifically, Mr. Leon and other non-exempt employees were often unable to take timely and compliant rest periods as the demands and time restrictions of their assigned routes often made taking timely and full rest periods impossible. Despite Employers' failure to authorize and permit Mr. Leon and other non-exempt employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Leon and other non-exempt employees with an additional hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Leon and other non-exempt employees were not authorized to take lawful rest periods.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to non-exempt employees, and failed to timely and fully pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately track time worked and compensate Mr. Leon and other aggrieved employees for all minimum and overtime wages, as well as the attendant failure to pay premium pay for failing to provide all required meal periods and authorize all rest periods.

Employers failed to issue to Mr. Leon and other aggrieved employees accurate itemized statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee was 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 (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.

Furthermore, Mr. Leon and other aggrieved employees worked overtime hours, but did not receive all overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Employers maintained a policy/practice of not compensating Mr. Leon and other aggrieved employees for all their overtime hours worked in the pay period. As discussed above, upon information and belief, Employers maintained a policy/practice of rounding hours such that tracking of overtime hours could be inaccurate, and Employers never paid more than 1.5 hour for overtime pay calculations, even if the hours actually worked entitled Mr. Leon and other aggrieved employees to doubletime pay. All overtime calculations were further flawed because they uniformly failed to include Mr. Leon and other aggrieved employees' annual bonus in the "regular rate" of pay calculations. Mr. Leon and other aggrieved employees for purposes of avoiding payment for work beyond the scheduled time. Employers also did not compensate Mr. Leon and other aggrieved employees for their overtime worked off the clock. As a result, Employers failed to ensure that Mr. Leon and other aggrieved employees were being paid at least the minimum wage for all hours worked, and failed to ensure that Mr. Leon and other aggrieved employees received proper overtime wages for all overtime hours worked.

Finally, Employers failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Leon and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to Mr. Leon and other aggrieved employees, Employers failed to do so, in violation of Labor Code § 2810.5.

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Orders ("IWC Wage Orders"):

Minimum Wage Violations

Employers were required to pay Mr. Leon and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; and relevant IWC Wage Orders. As alleged above, Employers maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Leon and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Leon and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

Employers were required to pay Mr. Leon and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; and relevant IWC Wage Orders, which require an employer to pay overtime wages when an employee's hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, Employers caused Mr. Leon and other aggrieved employees to work overtime hours but did not compensate Mr. Leon and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employers failed to provide Mr. Leon and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; and relevant IWC Wage Orders. As a result, Mr. Leon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with … [an] order of the Industrial Welfare Commission … the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Rest Period Violations

As alleged above, Employers also failed to authorize and permit Mr. Leon and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; and relevant IWC Wage Orders. As a result, Mr. Leon and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Wage Statement Violations

As described above, Employers were required to furnish Mr. Leon and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 13, § 7. As a result of Employers' failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Leon and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employers failed to timely pay Mr. Leon and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, Employers' failure to pay all final wages due to Mr. Leon and other aggrieved employees was willful and, consequently, entitles Mr. Leon and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employers failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Leon will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Leon's own investigation, and on information and belief, Employers committed and continue to commit the following Labor Code violations:

a. Employers violated Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Leon and other aggrieved employees the statutory minimum wage for all hours worked;

b. Employers violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Leon and other aggrieved employees all overtime compensation earned;

c. Employers violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Leon and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. Employers violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Leon and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Leon and other aggrieved employees at their respective regular rates of compensation;

e. Employers violated Labor Code § 226 by failing to furnish Mr. Leon and other aggrieved employees with accurate and compliant itemized wage statements;

f. Employers violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Leon and other aggrieved employees;

g. Employers violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Leon and other aggrieved employees; and

h. Employers violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Leon and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Employers if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,

STANSBURY BROWN LAW, PC

Kathleen J. Becket