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VIA ELECTRONIC FILING

March 28, 2025

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

MATHEWS READYMIX LLC
c/o CT CORPORATION SYSTEM
330 N BRAND BLVD., SUITE 700
GLENDALE, CA 91203

EFRAIN GARCIA v. MATHEWS READYMIX LLC

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Efrain Garcia (hereinafter “Mr. Garcia” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for MATHEWS READYMIX LLC (hereinafter referred to as “MATHEWS READYMIX”) **at all of their locations in the State of California**, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same.

Mr. Garcia worked for MATHEWS READYMIX over 19 years ago and is still technically on payroll. Mr. Garcia was and is classified as an hourly, non-exempt employee and his job title is mechanic.

It is our position that due to personally suffering the below violations, Mr. Garcia can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for MATHEWS READYMIX anywhere in the state of California (at all different locations) during the relevant PAGA period.

It is our position that MATHEWS READYMIX has violated the following Labor Code Sections against Mr. Garcia and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for MATHEWS READYMIX at their various locations in the State of California during the relevant PAGA period.



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MATHEWS READYMIX violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because MATHEWS READYMIX had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. Moreover, and to the extent that Mr. Garcia and others would work through their meal breaks, the latter would also amount to a minimum wage violation because they were not paid for all hours worked. Moreover, MATHEWS READYMIX failed to provide its employees with proper and accurate reporting time pay.

Pursuant to California Industrial Welfare Commission Order No. 1-2001/4-2001/16-2001, Section 9(B), “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” MATHEWS READYMIX unequivocally required its employees, including Mr. Garcia and the other installers and employees, to provide their own tools to perform work duties. The latter was company policy. As such, MATHEWS READYMIX violated the aforementioned IWC Wage Order(s) in that MATHEWS READYMIX required its employees to provide and maintain hand tools and equipment customarily required by the trade but did NOT compensate these employees at least two (2) times the minimum wage.

Due to the above “off the clock” violations, MATHEWS READYMIX also violated Labor Code §510 because it failed to pay our client and other aggrieved employees the correct overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Garcia’s and other aggrieved employees’ actual work hours entitled them to overtime compensation; however, MATHEWS READYMIX did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the time shaving/rounding as described above. Furthermore, MATHEWS READYMIX failed to include bonuses/incentive payments/shift differentials in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay. Mr. Garcia and others did receive quarterly production bonuses, however, the bonus payment was not included in any regular rate calculation for purposes of an adjusted overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

MATHEWS READYMIX also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 1/4/16 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MATHEWS READYMIX did not completely relieve our client and others of all duty during said rest periods. MATHEWS READYMIX did not pay to our client and others one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not consistently enforced, especially due to the fast-paced nature of the work and the environment, in which deadlines were paramount. In this regard, it is also important to note



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that Mr. Garcia was the only mechanic that would be working on trucks on -site. As such, there was constant pressure to get work done in a timely fashion and the company would depend on Mr. Garcia. Company policy did not dictate that employees received multiple rest breaks per shift wherein they are relieved of all work duties. As such, the culture as well as the policies and procedures of MATHEWS READYMIX did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at MATHEWS READYMIX was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

MATHEWS READYMIX violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 1/4/16 because it failed to provide hourly, non-exempt employees, including Mr. Garcia and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. MATHEWS READYMIX did not completely relieve Mr. Garcia and other employees of all duty during said meal periods. MATHEWS READYMIX did not pay to Mr. Garcia and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Mr. Garcia and others did not consistently receive meal breaks that were timely, uninterrupted, and within 5 hours of the start of their shift. Consequently, it was the normal practice and custom of MATHEWS READYMIX not to consistently authorize, permit, and enforce timely and uninterrupted statutory meal periods. If MATHEWS READYMIX had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 5-hour shift. **Furthermore, under California law, however, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket “waivers” of meal periods ...whether written or oral, will not be considered valid.”).** If MATHEWS READYMIX had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client’s job does not and did not prevent him from taking a meal period and the company could have hired “breakers” to relieve Mr. Garcia of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods during their employment. To the extent that MATHEWS READYMIX argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for



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the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at MATHEWS READYMIX was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, MATHEWS READYMIX failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Mr. Garcia was not compensated for the rounding/time shaving and since Mr. Garcia did not receive proper and complete meal and rest break premiums, Mr. Garcia would still be owed wages pursuant to Labor Code Section 204. MATHEWS READYMIX was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, MATHEWS READYMIX did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, MATHEWS READYMIX also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Garcia and others pursuant to California Labor Code sections 1174(d).

MATHEWS READYMIX also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Mr. Garcia and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by MATHEWS READYMIX. These costs include, but are not limited to, uniforms/work boots, and use of personal cell phones for work purposes as Mr. Garcia and others used their cell phones to communicate regarding work-related issues. In addition, Mr. Garcia brought his own personal hand tools to effectuate his job duties and was not reimbursed for this at all. Accordingly, MATHEWS READYMIX was in violation of California Labor Code sections 2800 and 2802.

Furthermore, MATHEWS READYMIX did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 1-2001/4-2001/16-2001.



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Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Garcia also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by MATHEWS READYMIX. If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.