

JUN 13 2023

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Attorneys for Plaintiff VICTOR M. MONTERO AVILA as an individual and on behalf of all
Aggrieved Employee

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

VICTOR M. MONTERO AVILA as an
individual and on behalf of all
Aggrieved Employees

Plaintiff,

v.

TOWER INDUSTRIES, INC. DBA ALLIED
MECHANICAL, and DOES 1 through 50,
inclusive

Defendants.



Case No.: **CIV SB 23 12694**

REPRESENTATIVE ACTION

**PLAINTIFF'S REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES**

1. Violation of the Private Attorneys' General Act, Labor Code § 2698 Failure to Pay All Wages, Including Minimum Wages and Overtime (Labor Code § 1194);
2. Violation of the Private Attorneys' General Act, Labor Code § 2698 Failure to Provide Meal Periods (Labor Code §§ 226.5, 512);
3. Violation of the Private Attorneys' General Act, Labor Code § 2698 Failure to Provide Rest Periods (Labor Code §§ 226.7, 512);
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 Failure to Keep Accurate Payroll Records (Labor Code §§ 1174, 226(A), (E));
5. Violation of the Private Attorneys' General Act, Labor Code § 2698 Failure to Pay Wages Upon Ending Employment (Labor Code §§ 201, 202, 203)

1 Plaintiff VICTOR M. MONTERO AVILA ("Mr. Avila" or "Plaintiff") as an individual
2 and on behalf of all Aggrieved Employees, complain and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and similarly aggrieved employees
5 who were subjected to one or more of the violations alleged herein ("Aggrieved Employees") by
6 Defendant TOWER INDUSTRIES, INC. DBA ALLIED MECHANICAL ("Defendant").

7 2. The term "RELEVANT TIME PERIOD" or "TIME PERIOD" is defined as one
8 (1) year prior plus sixty-five (65) days from the filing of the Complaint. Plaintiff reserves the
9 right to amend this complaint to reflect a different "Time Period" as further discovery is
10 conducted.

11 3. Plaintiff individually and on behalf the Aggrieved Employees he seeks to
12 represent, seeks relief against Defendant for: (1) failure to pay all wages due, including minimum,
13 regular, and overtime and double-time wages; wages; (2) failure to provide meal periods or
14 compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof;
15 (4) failure to reimburse for necessary expenditures; (5) failure to keep accurate time/payroll
16 records; (6) failure to provide accurate itemized wage statements (7) failure to pay wages of
17 terminated or resigned employees; and (8) unfair business practices as set forth more fully herein.
18 These violations concern current and past employees of Defendant.

19 4. At all relevant times herein, Defendant, has consistently maintained and enforced
20 against Plaintiff and the Aggrieved Employees the following unlawful policies and practices: (a)
21 refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including minimum wage,
22 overtime and double-time; (b) failing to provide Plaintiff and Aggrieved Employees with meal
23 periods or compensation in lieu thereof; (c) failing to provide Plaintiff and Aggrieved Employees
24 with rest periods or compensation in lieu thereof; (d) willfully refusing to compensate Plaintiff
25 and Aggrieved Employees wages due and owing at the time Plaintiff's and Aggrieved Employees'
26 employment with Defendants ended; and (e) willfully refusing to furnish to Plaintiff and
27 Aggrieved Employees accurate itemized wage statements upon payment of wages.
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1 participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50,
2 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
3 the violations alleged herein. Plaintiff will amend his complaint to allege the true names and
4 capacities of the DOE Defendants when that information is ascertained.

5 11. Plaintiff is informed and believes, and based thereon alleges, that each
6 Defendant acted in all respects pertinent to this action as the agent, servant, partner, joint venture,
7 alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in
8 performing the actions mentioned below was acting, at least in part, within the course and scope
9 of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego,
10 managing agent, and/or principal with the permission and consent of the co-Defendants. Plaintiff
11 also alleges the acts of each Defendant are legally attributable to the other Defendants.

12 **ADMINISTRATIVE PREREQUISITES**

13 12. Plaintiff brings this case as a representative action seeking penalties for the State
14 of California in a representative capacity, as provided for by the Private Attorneys General Act
15 (“PAGA”), Labor Code section 2698 et seq., to the extent permitted by law, as an aggrieved
16 employee who was employed by Defendant and subject to alleged violations set forth in Labor
17 Code section 2699.5. Plaintiff specifically alleged the following California Labor Code violations,
18 in his notice to the Labor Workforce Development Agency (“LWDA”) and the employer: Labor
19 code sections 226.7, , 204-205, 510, 512, 1174(d), 1194, 1197, 1198, 2802.

20 13. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
21 PAGA only after giving the Labor Workforce Development Agency (“LWDA”) and the employer
22 notice of the Labor Code sections alleged to have been violated, and after receiving notice from
23 the LWDA of its intention not to investigate, or after 65 days have passed without notice from the
24 LWDA.

25 14. On April 7, 2023, prior to the filing of this complaint, Plaintiff gave written notice
26 of the specified provisions alleged to have been violated, including the facts and theories to support
27 the alleged violations, as required by Labor Code section 2699.3. This written notice was given
28 via certified mail to Defendant, and to the LWDA by electronically filing the notice via the

1 Department of Industrial relations website. A true and correct copy of Plaintiff's original letter
2 sent to the LWDA is attached hereto as Exhibit A.

3 More than sixty-five (65) days have passed since Plaintiff submitted his April 7, 2023,
4 notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA
5 have not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff
6 further has received no notice of Defendant's intent to cure any of the alleged violations. Therefore,
7 Plaintiff has satisfied the administrative prerequisites for filing this action with regard to his April
8 7, 2023, PAGA notice.

9 **FACTUAL ALLEGATIONS**

10 1. Defendant operated its nutrition services business by employing non-exempt hourly
11 employees.

12 2. As employees, Plaintiff and Aggrieved Employees are non-exempt employees
13 within the meaning of the California Labor Code, and the implementing rules of the IWC
14 California Wage Orders.

15 3. Plaintiff was employed by Defendant in a non-exempt, hourly position as a shop
16 helper from around March 11, 2019, through around April 8, 2022.

17 4. Plaintiff is informed and believes that, and based thereon alleges, that Defendant's
18 policies and practices described herein are common across each of Defendant's locations within
19 the State of California.

20 5. Plaintiff alleges that Defendant failed to compensate him and Aggrieved
21 Employees at the legally mandate wage rates for all hours worked. Plaintiff and Aggrieved
22 Employees performed work during overtime periods and during meal periods and regularly and
23 frequently worked beyond eight (8) hours in a day. Furthermore, Defendant had a policy and
24 practice to non-include non-discretionary bonuses in the in the regular rate for purposes of
25 calculating the overtime and/or double time rate.

26 6. Defendant had a pattern, practice, and policy of not providing proper meal periods
27 Specifically, it was Defendant's policy and practice to prohibit Plaintiff and Aggrieved Employees
28 to not take meal periods because completing a job assignment was the Defendant's priority.

Furthermore, Defendant had a policy and practice to not allow Plaintiff and Class Members to leave the premises during rest periods, thereby maintaining control over them and not providing a duty-free meal period.

7. Plaintiff and Plaintiff Class did not receive their ten (10) minute rest breaks. Defendant failed to provide adequate coverage to relieve Plaintiff and Aggrieved Employees since a rest break was never given. Furthermore, Defendant had a policy and practice to not allow Plaintiff and Aggrieved Employees to leave the premises during rest periods, thereby maintaining control over them and not providing a duty-free meal period.

8. In violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided with accurate itemized wage statements showing the actual hours worked, correct premium wages earned per pay period, as well as the total hours worked per pay period. It was

9. It was Defendant's policy and practice to maintain time records that were inaccurate. Employer failed to keep accurate time records due to failure to include the non-discretionary bonus when calculating the regular rate for purposes of paying overtime or double time to Plaintiff and Aggrieved Employees. For example, Defendant required Plaintiff and Aggrieved Employees to work through their meal periods or receive them late, however, Defendant failed to pay a meal period penalty as a result, or pay minimum wages or overtime as a result of working through meal periods. Plaintiff and Aggrieved Employees allege the time records do not accurately reflect the hours worked when Plaintiff or Plaintiff Class worked through their meal period.

10. Plaintiff and Aggrieved Employees were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and Aggrieved Employees did not receive payment of all wages due, within permissible time periods, upon separation of employment.

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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGE AND OVERTIME WAGES**

3 **(Plaintiff and Aggrieved Employees Against Defendant)**

4 11. Plaintiff and Aggrieved Employees incorporates all previous paragraphs of this
5 complaint as though fully set forth herein.

6 12. Plaintiff alleges that, Defendant maintained throughout the PAGA Period, a
7 consistent policy and practice of failing to pay wages, including regular, overtime and double-time
8 wages dur for hours worked. Specifically, Defendant required Plaintiff and Aggrieved Employees
9 to perform work during overtime periods and during meal periods without premium compensation.

10 13. Defendant had a policy and/or practice of failing to include non-discretionary bonus
11 pay into the Plaintiff and Aggrieved Employees regular rate for purpose of paying overtime and/or
12 double time for hours worked over eight (8) hours in a day or forty (40) in a week.

13 14. Any employee receiving less than the legal minimum wage or legal overtime
14 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees,
15 and costs of suit pursuant to Labor Code sections 1194 and 1199.

16 15. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
17 Aggrieved Employees all wages including both minimum wage and overtime. Plaintiff and
18 Aggrieved Employees were denied proper wages as a result of Defendant' policy of having
19 Plaintiff and Aggrieved Employees work through meal and/or rest periods and failing to
20 compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay
21 pursuant to Labor Code §510. Defendant has regularly violated the Labor Code with respect to
22 meeting the requirements of paying wages earned, including minimum wage, overtime, double-
23 time and remuneration when calculating the employees' regular rate of pay, as herein before
24 alleged. Defendant intentionally excluded remuneration that must be included in all employees'
25 regular rate of pay in order to avoid payment of overtime wages and other benefits in violation of
26 the Labor Code and the order issued by the IWC. Thereby, Defendant is able to reduce its overhead
27 and operating expenses and gain an unfair advantage over competing airlines who comply with
28 state law.

1 16. Since the LWDA has not indicated that it will be investigating more than 65 days
2 since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy the
3 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
4 will seek any and all penalties otherwise capable of being collected by the Labor Commission, the
5 LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of
6 the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a)
7 applies to any alleged violation of the following provisions: 510 and 1194.

8 17. Plaintiff is informed and believes that Defendant has violated, and continues
9 to violate, provisions of the California Labor Code and applicable Wage Orders related to the
10 payment of minimum wages and overtime.

11 18. Plaintiff, as a personal representative of the general public, will and does seek to
12 recover any and all penalties for each and every violation shown to exist or to have occurred during
13 the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
14 only available to public agency enforcement actions. Funds recovered will be distributed in
15 accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the
16 LWDA.

17 19. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
18 costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and prejudgment interest.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

21 **(Plaintiff and Aggrieved Employees Against Defendant)**

22 20. Plaintiff and Aggrieved Employees incorporates all previous paragraphs of this
23 complaint as though fully set forth herein.

24 21. Labor Code sections 226.7 and 512, provides that no employer shall employ any
25 person for a work period of more than five (5) hours without providing a meal period of not less
26 than thirty (30) minutes or employ any person for a work period of more than ten (10) hours
27 without a second (2nd) meal period of not less than thirty (30) minutes.

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1 22. Labor Code section 226.7 provides that if an employer fails to provide an employee
2 a meal period in accordance with this section, the employer shall pay the employee one (1) hour
3 of pay at the employee's regular rate of compensation for each workday that the meal period is not
4 provided in accordance with this section.

5 23. As a result, Plaintiff and Aggrieved Employees were often forced to forego meal
6 periods and/or work during their meal periods. In so doing, Defendant has intentionally and
7 improperly denied meal periods to Plaintiff and Aggrieved Employees in violation of Labor Code
8 section 226.7 and 512 and other regulations and statutes.

9 24. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
10 than five (5) hours in a workday.

11 25. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
12 worked more than ten (10) hours in a workday.

13 26. At all times relevant hereto, the Defendant, and each of them, due to their failure to
14 schedule non-exempt positions in a manner so as to reasonably provide meal and/or work free
15 meal period as required by Labor Code section 226.7 and 512.

16 27. Industrial Welfare Commission (IWC) Wage Order No. 9-2001 (Wage Order 9)
17 section 11(C) states,

18 28. "Unless the employee is relieved of all duty during a 30-minute meal period, the
19 meal period shall be considered an "on duty" meal period and counted as time worked. An "on
20 duty" meal period shall be permitted only when the nature of the work prevents an employee from
21 being relieved of all duty and when by written agreement between the parties an on-the-job paid
22 meal period is agreed to. The written agreement shall state that the employee may, in writing,
23 revoke the agreement at any time."

24 29. The burden to prove that a meal or rest period violation has occurred normally rests
25 on the Plaintiff. *However, under Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138,
26 1159-60), where an employer fails to keep accurate records of meal and rest periods, a presumption
27 of meal and rest period violations is created, shifting the burden to the employer to prove that meal
28 and rest period violations did not occur.

1 30. Defendant failed to schedule non-exempt employees in an adequate manner so as
2 to reasonably ensure Plaintiff and Aggrieved Employees could take and/or receive such meal
3 periods within the statutory timeframe. Defendant denied Plaintiff and Aggrieved Employees duty
4 free meal periods, as a result, Plaintiff and Aggrieved Employees were often forced to forego meal
5 periods and/or work during their meal periods. In so doing, Defendant have intentionally and
6 improperly denied meal periods to Plaintiff and Aggrieved Employees in violation of Labor Code
7 §§ 226.7 and 512 and other regulations and statutes.

8 31. Defendant failed to keep accurate records of the meal periods taken by Plaintiff and
9 Aggrieved Employees.

10 32. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
11 than five (5) hours in a workday.

12 33. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
13 worked more than ten (10) hours in a workday.

14 34. At all times relevant hereto, Defendant, failed to schedule non-exempt positions in
15 a manner so as to reasonably provide meal and/or work free meal period as required by Labor
16 Code §§ 226.7 and 512.

17 35. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
18 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
19 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
20 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, damages in amounts which
21 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
22 ascertained according to proof at trial.

23 36. Further, Defendant's failure to maintain accurate records of the meal periods taken
24 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred and
25 shifts the burden to Defendant to prove they did not occur.

26 37. Plaintiff individually, and on behalf of the Aggrieved Employees, requests recovery
27 of meal period compensation pursuant to Labor Code § 226.7 which they are owed beginning four
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1 (4) years prior to filing this Complaint as well as the assessment of any statutory penalties against
2 these Defendant, and each of them, in a sum as provided by the Labor Code and/or other statutes.

3 38. Since the LWDA has not indicated that it will be investigating and 65 days have
4 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy
5 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
6 will seek any and all penalties otherwise capable of being collected by the Labor Commission, the
7 LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of
8 the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a)
9 applies to any alleged violation of the following provisions: 510 and 1194.

10 39. Plaintiff is informed and believes that Defendant has violated and continues to
11 violate provisions of the California Labor Code and applicable Wage orders related to the payment
12 of minimum wages including overtime.

13 40. Plaintiff, as a personal representative of the general public, will and does seek to
14 recover any and all penalties for each and every violation shown to exist or to have occurred during
15 the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
16 only available to public agency enforcement actions. Funds recovered will be distributed in
17 accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the
18 LWDA.

19 41. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
20 costs pursuant to Labor Code sections 2699(g)(1), and prejudgment interest.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REST PERIOD OR COMPENSATION IN LIEU THEREOF**

23 **(Plaintiff and Aggrieved Employees Against Defendant)**

24 42. Plaintiff and Aggrieved Employees incorporates all previous paragraphs of this
25 complaint as though fully set forth herein.

26 43. Labor Code section 226.7 provides that employers authorize and permit all
27 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.
28

1 44. Labor Code section 226.7(b) provides that if an employer fails to provide an
2 employee, rest periods in accordance with this section, the employer shall pay the employee one
3 (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period
4 is not provided.

5 45. Defendant, and each of them, failed and or refused to implement a relief system by
6 which Plaintiff and Plaintiff Class could receive rest periods and/or work free rest periods.
7 Furthermore, had a policy and/or practice that Plaintiff and Plaintiff Class could not leave the work
8 premises during the rest period. By and through their actions, Defendant intentionally and
9 improperly denied rest periods to the Plaintiff and Plaintiff Class in violation of Labor Code
10 sections 226.7 and 512.

11 46. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
12 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
13 together in violation of Labor Code §§ 226.7 and 512.

14 47. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
15 Aggrieved Employees.

16 48. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked more
17 than four (4) hours in a workday.

18 49. By virtue of the Defendant's unlawful failure to provide rest periods to Plaintiff and
19 Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and
20 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
21 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
22 ascertained according to proof at trial.

23 50. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure to
24 provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of requiring
25 employees to work through their rest periods without receiving compensation in lieu thereof, is an
26 aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all
27 prerequisites to serve as a representative of the general public to enforce California's labor laws,
28 and the penalty provisions identified in Labor Code section 2699.5.

1 51. Plaintiff, as a representative of the people of the State of California, will seek any
2 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or
3 the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which
4 provides that section 2699.3(a) applies to any alleged violation of the following provisions: 226.7
5 and 512.

6 52. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred during
8 the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
9 only available to public agency enforcement actions. Funds recovered will be distributed in
10 accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the
11 LWDA.

12 53. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
13 costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO MAINTAIN ACCURATE TIME RECORDS**

16 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

17 54. Plaintiff and Aggrieved Employees incorporates all previous paragraphs of this
18 complaint as though fully set forth herein.

19 55. Labor Code section 1174(d) provides “every person employing labor in this state
20 shall keep, at a central location in the state...payroll records showing the hours worked daily by
21 and the wages paid to...employees...These records shall be kept in accordance with rules
22 established for this purpose by the commission, but in any case, shall be kept on file for not less
23 than two years.

24 56. Defendant knowingly and intentionally failed to maintain accurate time records for
25 Plaintiff and Aggrieved Employees in accordance with Labor Code section 1174(d) by failing to
26 record the accurate number of hours worked as a result of Defendant’s policies and procedures.
27 Specifically, Defendant implemented a policy and procedure to require Plaintiff and Aggrieved
28 Employees to work through their meal periods, while having them clock out to indicate on their

1 time cards that a lunch was taken, even though the lunch was not in fact taken, interrupted or taken
2 late. It is Plaintiff's and Aggrieved Employees belief based on information, that the motive for
3 Defendant's policy was to make it appear as though Defendant was complying with the wage and
4 hour laws of California, even though Defendant was not in compliance. As a result of Defendant's
5 policies and procedures, Defendant failed to maintain accurate time records thus causing Plaintiff
6 and Aggrieved Employees injury.

7 57. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
8 section 226 subsection (a) and the greater of all actual damages or fifty dollars (\$50.00) for the
9 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
10 violation in each subsequent pay period, pursuant to Labor Code section 226 subsection (e).

11 58. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
12 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
13 as a representative of the general public to enforce California's labor laws, and the penalty
14 provisions identified in Labor Code section 2699.5.

15 59. Plaintiff, as a representative of the people of the State of California, will seek any
16 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
17 This includes each of the following, as set forth in Labor Code section 2699.5, which provides that
18 section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7,
19 510, 512, 1174, and 1194.

20 60. Plaintiff, as a personal representative of the general public, will and does seek to
21 recover any and all penalties for each and every violation shown to exist or to have occurred during
22 the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
23 only available to public agency enforcement actions. Funds recovered will be distributed in
24 accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the
25 LWDA.

26 61. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
27 costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES UPON TERMINATION**

3 **(Plaintiff and Aggrieved Employees against all Defendants)**

4 62. Plaintiff and Aggrieved Employees incorporates all previous paragraphs of this
5 complaint as though fully set forth herein.

6 63. During the relevant time period, Plaintiff and formerly employed members of the
7 Plaintiff Class resigned or were terminated from their positions with Defendant. Defendant,
8 however, willfully did not pay Plaintiff and Plaintiff Class all wages which were due them upon
9 their separation of employment immediately upon termination or within seventy-two (72) hours of
10 their resignation as required by Labor Code section 202, subdivision (a). Defendant failed to pay
11 Plaintiff and Plaintiff Class all minimum wage due which were earned throughout their
12 employment. Defendant also failed to pay proper premium wages for times Plaintiff and Class
13 Members were not provided meal and/or rest breaks.

14 64. Labor Code section 203 provides that “if an employer willfully fails to pay, without
15 abatement or reduction, in accordance with sections 201, 201.5, 202, and 205.5, any wages of an
16 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
17 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
18 the wages shall not continue for more than thirty (30) days.”

19 65. Plaintiff and Plaintiff Class who ended their employment with Defendant by
20 resignation or termination, during the relevant time period, were entitled to be promptly paid both
21 minimum wage and lawful overtime compensation and other premiums, as required by Labor Code
22 sections 201 and 203.

23 66. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved
24 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as
25 well as pay both minimum and overtime compensation owed for work performed for Defendant.

26 67. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
27 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as
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1 a representative of the general public to enforce California's labor laws, and the penalty provisions
2 identified in Labor Code section 2699.5.

3 68. Plaintiff, as a representative of the people of the State of California, will seek any
4 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
5 This includes each of the following, as set forth in Labor Code section 2699.5, which provides that
6 section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7,
7 510, 512, 1174, and 1194.

8 69. Plaintiff, as a personal representative of the general public, will and does seek to
9 recover any and all penalties for each and every violation shown to exist or to have occurred during
10 the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
11 only available to public agency enforcement actions. Funds recovered will be distributed in
12 accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the
13 LWDA.

14 70. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and
15 costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

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1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code §558;
2. For costs of suit and expenses incurred herein pursuant to Labor Code §§ 2699(g) and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code §§ 2699(g) and any other statutory basis, and;
4. That the Court award such other and further relief as this Court may deem appropriate.

MAHONEY LAW GROUP, APC

Kevin Mahoney
Attorneys for Plaintiff VICTOR MONTERO
AVILA and on behalf of all employees similarly
situated

EXHIBIT A



Kevin Mahoney, Esq.
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562.590.8400 facsimile
kmahoney@mahoney-law.net

April 7, 2023

VIA ELECTRONIC FILING
LABOR AND WORKFORCE DEVELOPMENT AGENCY
Attn: PAGA Administrator
<https://dir.tfaforms.net/266>

VIA FIRST CLASS CERTIFIED MAIL: 7022 2410 0000 2418 5729
Tower Industries, Inc.
5699 Happy Canyon Rd.
Santa Ynez, CA 93460

Re: Victor M. Montero Avila v. Tower Industries, Inc.,

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SETION
§2698 et seq.**

To: California Labor and Workforce Development Agency, Tower Industries, Inc.

From: Victor M. Montero Avila on behalf of himself and all aggrieved employees who were subject to the employer's wage and hour policies and practices as set forth below.

Factual Statement

Mahony Law Group, APC represents the interests of Mr. Victor M. Montero Avila ("Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA") on behalf of himself and other aggrieved employees.

Tower Industries, Inc. (Employer) is a company that provide metal work services to its customers. It employs no less than fifty (50) employees at its location.

Mr. Montero Avila and other aggrieved employees perform the job duties of a non-exempt hourly employee in the personnel files Employer maintains.

Employer has violated and continues to violate several California Labor Code provisions, which are listed below. Therefore, Employer is liable for civil penalties under PAGA.

Theories of Labor Code Violations and Remedies

Failure to Pay Wages Pursuant to Labor Code sections 200-204, 510, 1194, 1197, 1198 and the IWC Wage Order

Employer failed to pay Mr. Montero Avila and other aggrieved employees for all hours worked at the legally mandated wage rates. Mr. Montero Avila and similarly aggrieved employees (1) performed work off-the-clock, during meal periods; and (2) Employer failed and/or refused to compensate Mr. Montero Avila and other aggrieved employees at a correct rate of overtime and/or double time for working more than eight (8) or twelve (12) hours in one day as a failure to include non-discretionary bonuses into the regular rate for purposes of paying overtime.

Furthermore, it was Employer's policy and procedure to require Mr. Montero Avila and other similar aggrieved employees to work during their meal breaks in order to complete their required job duties for the day. When Mr. Montero Avila and other similarly aggrieved employees did take a late lunch, the employer failed to pay overtime and double time at the correct rate due to failing to include non-discretionary bonuses into the regular hourly rate. These policies and procedures implemented by Employer, substantially caused Mr. Montero Avila and similarly aggrieved employees to suffer a violation of California Labor Code sections 200-204, 510, 558, 1194, 1197, 1198 and the IWC Wage Order.

Failure to Provide Rest and Meal Periods Pursuant to Labor Code section 226.7, 512, and IWC Wage Order

Employer failed to provide meal and rest periods to Mr. Montero Avila and similarly aggrieved employees. It was the policy and procedure of the Employer to require Mr. Montero Avila and similarly aggrieved employees complete work during their meal break because completing a job was the Employer's priority. Thus, Mr. Montero Avila and similarly situated employees did not get uninterrupted and duty-free meal breaks due to Employer's policies and practices which prioritized work tasks over meal period compliance. Mr. Montero Avila and other aggrieved employees were prevented from taking lawful rest periods due to Employer requiring them to stay on the work premises for their rest periods, and as a result, Employer's failed to provide them with premium pay for every untimely or uninterrupted meal period and rest periods. Employer's conduct which is in violation of Labor Code section 226.7, 512, as well as California Code of Regulations, Title 8, section 11010, subdivisions 11 and 12, is also actionable under PAGA. Further, insofar as Employers required the employees to work during their meal periods, the timekeeping by Employer's were non-compliant under Labor Code section 1174 and California Code of Regulations, Title 8, section 11010, subdivision 7. As such, Employer's policies and practices substantially caused Mr. Montero Avila and similarly aggrieved Employees to suffer a violation of Labor Code section 226.7, 512, 1174, and the applicable IWC Wage Order.

Failure to Maintain Accurate Time Records Pursuant to Labor Code section 1174(d)

Employer did not keep accurate time records in violation of the Labor code, the applicable wage order, and actionable under PAGA. Employer failed to keep accurate time records reflecting the proper overtime rate as a result of not including the non-discretionary bonus into the regular rate,

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or by requiring Mr. Montero Avila and aggrieved employees to work during meal periods. Therefore, Employer's policy and procedures have substantially caused Mr. Montero Avila and similarly aggrieved Employees to suffer a violation of the Labor Code sections 1174(d).

Failure to Furnish Itemized Wage Statements Pursuant to Labor Code section 226 and 1174

As a result of Employer's failure to pay all wages owed as described above, Employer further failed to keep accurate payroll records and failed to provide Mr. Montero Avila and other aggrieved employees with complete and accurate wage statements showing the true number of hours worked and accurate overtime/premium wages earned per pay period. As such, Employer's policy and practice to not provide any itemized wage statements substantially caused Mr. Montero Avila and similarly aggrieved Employees to suffer a violation of Labor Code section 226.7, 512, 1174.

Conclusion

Employer has violated a number of California wage and hour laws. Mr. Montero Avila will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC