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July 27, 2023

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Via Certified Mail

Labor & Workforce Development Agency
By electronic submission

HYG Country Drive Imports, Inc.
200 SW 1st Avenue, 14th Floor
Fort Lauderdale, FL 33301

Defendant mailed certified # 70220410000299335887

Agent for Service of HYG Country Drive Imports, Inc.
CSC - Lawyers Incorporating Service
Becky DeGeorge
2710 Gateway Oaks Drive
Sacramento, CA 95833

Agent mailed certified # 70220410000299335894

Re: ***Labor Code Violations of HYG Country Drive Imports, Inc. – Compliance
Letter of California Labor Code § 2698, the Private Attorneys General Act of
2004***

Dear LWDA:

This office represents Nathan Hale, a California employee of HYG Country Drive Imports, Inc. (“Defendant”). We write this letter in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*

Our client is currently employed by Defendant in Southern California. Herein we set forth the facts and theories of California Labor Code violations which we allege Defendant engages in with respect to our client and other of its non-exempt California employees, including, but not limited to, those paid on a commission and/or piece rate basis, such as sales employees (“Aggrieved Employees”).

Defendant fails to pay all minimum wages and overtime wages earned, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. Our client and some other Aggrieved Employees are improperly classified as overtime-exempt inside sales employees. Under California law, an inside sales employee is exempt from overtime pay if more than half of the employee’s pay is from commissions, so long as the hourly earnings are more than 1.5 times the minimum wage. Cal. Code Regs., tit. 8, § 11070, subd. 3(D). Our client and similar Aggrieved Employees often do not satisfy the requirements of this exception, and are therefore denied all minimum and overtime wages due. As a result, our client and similar Aggrieved Employees are not properly compensated for all minimum wages and overtime wages for work performed in excess of eight (8) hours in a workday and work performed in excess of forty (40) hours in a workweek at a rate of no less than

one and one-half times the regular rate of pay, in violation of Labor Code §§ 510, 558, 1194, and 1194.2.

Defendant fails to pay our client and some Aggrieved Employees for time when they are working, but cannot earn commission or piece rate, including, but not limited to, time spent on administrative tasks, wait times between sales, or rest periods, even though they are under the control of Defendant and entitled to be paid at least the minimum wage for all hours worked or under the control of Defendant, in violation of Labor Code §§ 510, 558, 1194, and 1194.2. When employees are paid on a commission or piece rate basis, they must be paid separately for non-commission associated activities. *See Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 47 (“the obligation to pay minimum wages attaches to each and every separate hour worked during the payroll period, and that payment must be made for all such hours on the established payday . . .”). Our client and some other Aggrieved Employees are not paid separately for such tasks and, thus, are denied the payment of all minimum wages due for extended periods of their workdays. This violates Labor Code §§ 510, 558, 1194, and 1194.2.

Our client alleges that Defendant fails to properly compute bonuses, commission wages, shift differential wages, and/or other non-base hourly wages earned by him and other Aggrieved Employees into their regular rate of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194. Defendant pays our client and other Aggrieved Employees bonuses, commission wages, shift differential wages, and/or other non-base hourly wages; however, Defendant fails to properly blend these forms of pay into the regular rate of pay, and instead pays our client and other Aggrieved Employees meal and rest period premiums, overtime wages, vacation wages, and sick pay wages based *only* on the base hourly rate of pay (and with no adjustment), if at all, thus depriving our client and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.

Defendant also fails to reimburse our client and other Aggrieved Employees for necessary business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor Code § 2802, including, but not limited to, the use of their personal cellphones. Labor Code § 2802 states that an employer must indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Defendant’s failure to do so violates this section.

Our client alleges that Defendant fails to pay correct premium wages to him and other Aggrieved Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 7-2001. Our client and other Aggrieved Employees are routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour’s pay for each missed rest period. In addition, as our client and certain Aggrieved Employees can only earn commissions, bonuses, and piece rate wages when they perform limited tasks, they should be separately paid for their rest periods when no commission

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wages, bonus, or piece rate wages can be earned, as discussed above. In addition, our client and other Aggrieved Employees are frequently too busy to take an off-duty rest period and they are therefore denied. This violates Labor Code § 226.7 and IWC Wage Order No. 7-2001.

Defendant fails to pay correct premium wages to our client and other Aggrieved Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 7-2001. Our client and other Aggrieved Employees are routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but are not paid premium wages of one hour's pay for each missed first or second meal period. When they are able to take a meal period, they are oftentimes late, cut short, or on-duty. This violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 7-2001.

Our client further alleges that Defendant fails to provide him and all other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As our client and other Aggrieved Employees are not paid all wages due, as stated above, the wage statements provided by Defendant fails to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3.

Our client further alleges that Defendant fails to pay certain Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, Aggrieved Employees are not paid all wages due during the course of their employment and, as a result of this failure, they are not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of certain Aggrieved Employees no longer employed by Defendant.

The \$75 PAGA filing fee has been submitted to the LWDA concurrently with the transmission of this letter.

We invite Defendant or its attorneys to contact our office to discuss this matter, including whether an early resolution of the claims can be reached.

Very truly yours,

GAINES & GAINES
A Professional Law Corporation

By :


EVAN S. GAINES