



August 25, 2023

VIA LWDA WEBSITE

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

Re: *Eduardo Jimenez v. Gino/Giuseppe, Inc. dba G&G Construction Co.;
Arias/Graziano Enterprises dba Quadrant Concrete, Inc.; G&G
Construction Management, LP*

To Whom It May Concern:

Please be advised that this law firm represents Eduardo Jimenez (“Mr. Jimenez”) in claims for Labor Code violations arising from his employment with Gino/Giuseppe, Inc. dba G&G Construction Co.; Arias/Graziano Enterprises dba Quadrant Concrete Inc., G&G Construction Management, LP; and DOES 1 through 100 (collectively “G&G”). Mr. Jimenez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to G&G’s 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.

G&G are in the business of construction. Mr. Jimenez worked for G&G from approximately August 2021 until approximately November 30, 2022 when he was informed that Defendant Gino/Giuseppe, Inc. dba G&G Construction Co. closed its doors and was rebranding itself as Arias/Graziano Enterprises dba Quadrant Concrete, Inc. Mr. Jimenez worked as a general laborer and he was tasked with grading soil, positioning rebars, and prepping areas to lay cement. Mr. Jimenez generally worked Monday through Friday from around 7:00 a.m. until around 3:30 p.m. or from approximately 6:00 a.m. to approximately 2:30 p.m. during daylight savings time and also worked some Saturdays from 6:00 a.m. to 2:30 p.m. Mr. Jimenez averaged approximately 8 to 9.5 hours per workday, but sometimes worked over 10.0 hours in a workday. However, as discussed below, G&G required Mr. Jimenez and other aggrieved employees, to work off the clock without compensation, take rest periods without compensation and failed to reimburse employees for necessary business expenses, among other violations.¹

¹ All G&G entities are jointly and severally liable for the violations alleged herein pursuant to, among other theories of liability, Labor Code §200.3, which holds “a successor to any judgment debtor shall be liable for any wages, damages, and penalties owed to any of the judgment debtor’s former workforce pursuant to a final judgment.”

During Mr. Jimenez's employment with G&G, he performed work for other presently unknown entities. As such, G&G are jointly liable with the other unknown entities for all civil legal responsibility and civil liability for the payment of wages, including sums payable to an employee or the state of California based upon any failure to pay wages, pursuant to Labor Code § 2810.3.

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

Throughout the duration of Mr. Jimenez's employment with G&G, Mr. Jimenez and other non-exempt employees were not paid for all hours worked, including overtime hours worked. Mr. Jimenez clocked in and out through his phone.

Approximately two to three times per month, Mr. Jimenez had to drive to different work locations during the workday for an average time of approximately twenty-five minutes. While G&G kept Mr. Jimenez on the clock during his commute, G&G required Mr. Jimenez to work beyond eight hours in one day to make up for the time it took him to travel from one work location to another. On average, G&G required Mr. Jimenez to work beyond eight hours approximately two to three times per week. Further, Mr. Jimenez and other non-exempt employees worked at least eight (8) hours per day. However, Mr. Jimenez's paystubs show that sometimes Mr. Jimenez was not paid a full forty (40) hours in one workweek. Mr. Jimenez did not receive overtime compensation for all of his overtime worked.

G&G also required Mr. Jimenez to carry his work-issued phone with him outside of work hours for the purposes of clocking in and regularly checking his schedule to see if he needed to report to work and to which location. Mr. Jimenez also had to regularly call G&G to see if he needed to report to work. He was never compensated for this time spent on call despite Mr. Jimenez and other aggrieved employees being restricted in their activities and locations while on call.

Mr. Jimenez and other non-exempt employees had to clock out for both of their 15-minute rest periods on each workday and they were not compensated for this time. G&G never provided Mr. Jimenez and other non-exempt employees with an 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, G&G maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Jimenez and other non-exempt employees were not authorized to take lawful rest periods.

Furthermore, Mr. Jimenez and other non-exempt employees worked overtime hours, based on the requirements of Wage Order 16, but did not receive overtime

compensation equal to one and one-half times their regular rates of pay for all overtime hours worked.

Despite G&G's failure to provide Mr. Jimenez and other non-exempt employees with all lawful meal periods due to its uniform and unlawful practices, G&G did not provide Mr. Jimenez and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Furthermore, G&G failed to adequately reimburse Mr. Jimenez and other non-exempt employees for all reasonable and necessary work expenditures, including but not limited to, requiring Mr. Jimenez to purchase work shoes, pants, shirts of a specific color such as yellow or orange for his work uniform and his own tools such as hammers, measuring tape and pliers. Mr. Jimenez was not ever provided any reimbursement for these necessary uses. Nor was Mr. Jimenez ever reimbursed for mileage expenses on the days that he had to drive to different work locations during the workday.

G&G failed to issue to Mr. Jimenez and other non-exempt 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 is 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, if the employer is a farm labor contractor, the name and address of the legal entity that secured the services of 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.

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

G&G failed to meet its obligations to provide paid sick leave to Mr. Jimenez and other aggrieved employees under Labor Code § 245.5(b) which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, Mr. Jimenez and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b), did not accrue sick leave as required, and were not notified of properly notified of their ability to take sick leave.

Finally, G&G failed to conform to the requirements of Labor Code § 2810.5 by failing to provide Mr. Jimenez 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. Jimenez and other aggrieved employees, G&G failed to do so, in violation of Labor Code § 2810.5.

As described above, G&G committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 16 ("Wage Order 16"):

Minimum Wage Violations

G&G were required to pay Mr. Jimenez 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; Wage Order 16 § 4. As alleged above, G&G maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Jimenez and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Jimenez and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

G&G were required to pay Mr. Jimenez and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; Wage Order 16, § 3. Wage Order 16, § 3 requires 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, G&G caused Mr. Jimenez and other aggrieved employees to work overtime hours but did not compensate Mr. Jimenez and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, G&G failed to provide Mr. Jimenez and other aggrieved employees with all required and compliant meal periods due to G&G's 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; Wage Order 16, § 10. As a result, Mr. Jimenez 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, G&G also failed to authorize and permit Mr. Jimenez and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 16, § 11. As a result, Mr. Jimenez 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.”)

Failure to Reimburse Necessary Business Expense

G&G were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” G&G were subject to Labor Code § 2804, which states that “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.” As alleged herein, due to G&G’s unlawful reimbursement practices, G&G failed to indemnify Mr. Jimenez and other aggrieved employees for all necessary business expenses incurred, including, among other things, work shoes, pants, shirts of a specific color such as yellow or orange for his work uniform and his own tools such as hammers, measuring tape and pliers. Nor were Mr. Jimenez or other aggrieved employees ever reimbursed for mileage expenses on the days that they had to drive to different work locations during the workday. Mr. Jimenez and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, G&G were required to furnish Mr. Jimenez 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 16, § 6. As a result of G&G’s failure to pay all overtime wages,

minimum wages, and failure to pay all required meal and rest period premium wages, G&G maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Jimenez 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. G&G failed to timely pay Mr. Jimenez 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, G&G's failure to pay all final wages due to Mr. Jimenez and other aggrieved employees was willful and, consequently, entitles Mr. Jimenez and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day G&G failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

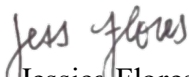
As an "aggrieved employee," Mr. Jimenez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Jimenez's own investigation, and on information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

- a. G&G violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Jimenez and other aggrieved employees the statutory minimum wage for all hours worked;
- b. G&G violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Jimenez and other aggrieved employees all overtime compensation earned;
- c. G&G 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. Jimenez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. G&G violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Jimenez and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Jimenez and other aggrieved employees at their respective regular rates of compensation;
- e. G&G violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Jimenez and other aggrieved employees for all work-related expenses incurred;
- f. G&G violated Labor Code § 226 by failing to furnish Mr. Jimenez and other aggrieved employees with accurate and compliant itemized wage statements;

- g. G&G violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Jimenez and other aggrieved employees;
- h. G&G violated Labor Code § 204 by failing to pay Mr. Jimenez and other aggrieved employees all wages earned at least twice during each calendar month;
- i. G&G violated Labor Code § 205 by failing to pay Mr. Jimenez and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- j. G&G violated Labor Code § 245.5 by failing to permit and authorize Mr. Jimenez and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- k. G&G violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Jimenez and other aggrieved employees; and
- l. G&G violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Jimenez and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and G&G 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


Jessica Flores

cc: Gino/Giuseppe, Inc. dba G&G Construction Co. (via certified mail)
Arias/Graziano Enterprises dba Quadrant Concrete Inc. (via certified mail)
G&G Construction Management, LP (via certified mail)