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January 11, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

PPG Industries, Inc.
One PPG Place
Pittsburgh, PA 15272

Sierracin/Sylmar Corporation
12780 San Fernando Road
Sylmar, CA 91342

Re: **AMENDED** PAGA Notice Pursuant to California Labor Code §2699

Claimant: Jose Moreno

Employers: PPG Industries, Inc., Sierracin/Sylmar Corporation

Dear Sir or Madam:

Jose Moreno (“Claimant”) has retained Nazo Koulloukian, Esq. of the Koul Law Firm and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employers, PPG Industries, Inc., and Sierracin/Sylmar Corporation (hereafter collectively referred to as “Employer”).

Claimant began working for Employer in 2018 as a primary technician in Employer’s Sylmar, CA facility. In September of 2023, Claimant was suspended yet, as of the date of this letter, remains an employee of Employer.

Due to unlawful conditions of employment, Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce

and Development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Include All Earnings in Regular Rate of Pay to

Calculate Overtime and Penalty Wages

(Cal. Labor Code §§ 510, 558, 1194, 1197, 1197.1, 1198, 2699 et seq.)

Pursuant to Labor Code §200(a) the term “wages” includes “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.”

Employer paid additional wages including nondiscretionary bonuses and additional wages including Attendance Pay, Award Plan, and Special Payments to Claimant and aggrieved employees but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating overtime, and meal and rest period premiums. Further, when additional pay is issued for work performed in prior pay periods, Employer failed to pay employees additional overtime, penalty, and sick pay wages owed as a result of the additional remuneration covering a longer period.

It is well established that these additional earnings increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus or paid a higher rate of pay that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer did not make any adjustments to overtime, sick pay, or penalty pay rates to incorporate the additional pay, and this failure is reflected in Claimant and aggrieved employees’ paystubs. Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime, as well as §1198 which makes it a violation of the labor code to fail to comply with a wage order. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 et seq.

Sick Leave Wages
(Cal. Labor Code §246)

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (l)

Employer paid additional wages including nondiscretionary bonuses and additional wages including Attendance Pay, Award Plan, and Special Payments to Claimant and aggrieved employees but failed to include the additional pay when calculating the regular rate of pay for purposes of calculating sick pay. As a result, Claimant and aggrieved employees were paid sick leave wages at the base hourly rate of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l). Employer is liable for civil penalties pursuant to Cal. Labor 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month
(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to aggrieved employees at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements **(Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)**

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees are inaccurate for many reasons, in addition to the inaccuracies derivative of the claims above.

Wage statements fail to state the total hours worked. They also fail to accurately calculate overtime hours on wage statements and do not indicate whether holiday pay is for hours actually worked given the failure to list total hours worked. Further, the mathematical calculations as to overtime do not add up given the information listed on the face of the wage statement. It appears that Employer includes group life or California SDI in the calculation of overtime which also results in incorrect overtime rates. Further, the Medicare deduction listed on wage statements is below the required 1.45%.

Wage statements also failed to list the accurate rate of pay and meal and rest period penalty wages when required. Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled.

Employer issued and maintained inaccurate wage statements and records and is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue these claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorney for Claimant