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Via E-filing:

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

Via Certified U.S. Mail:

QUIKRETE CALIFORNIA, LLC
5 CONCOURSE PARKWAY SUITE 1900
ATLANTA, GA 30328

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Sergio Olivares Garcia
Employer: Quikrete California, LLC

Dear Sir or Madam:

Sergio Olivares Garcia (“Claimant”) has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM to represent him, and all other aggrieved employees, for conditions of employment and wage and hour claims against his former employer, Quikrete California, LLC, a California Limited Liability Company (hereafter “Employer”).

Claimant worked for Employer until October of 2023. 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 Comply with California Law Concerning Payment of Lawful Wage For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*)

Section 2(G) of the pertinent Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and his coworkers earning at or near minimum wage do not receive payment for all hours worked as a result of unlawful employment practices, including waiting in line to clock in and out and required off the clock tasks, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Claimant and aggrieved employees were required to perform several required duties off the clock. Employees were required to wait in line to clock in and out at time machines. Although there was more than one time machine, only one was consistently operational resulting in long lines to clock in. Additionally, employees were required to arrive prior to their shifts to perform an equipment check. For example, Claimant would consistently arrive 7-8 minutes early to perform an equipment check on the forklift he was to operate for that shift. Employer has violated Labor Code §§510 1194, 1198, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2698 *et seq.*

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimants and employee 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 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Order. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

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, including accrued vacation, 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 Claimant at the time employment terminated. Upon termination, Employer told Claimant that this final check would be mailed to him or provided by direct deposit, despite the fact that Claimant was terminated in person.

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 Timely Meal Breaks

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

In this case, Claimant and his coworkers frequently took late or short meal periods, and some were missed completely. Claimant sometimes was required to take his lunch after his 6th hour of work. He also had his meal breaks interrupted and cut short when required to return to the assembly line.

The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Employer failed to permit Claimant and others to take timely, off-duty, meal breaks

of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer never paid penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks, Potable Water, and Adequate Restroom Facilities

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 et seq., 3457, 6712)

Employer has failed to maintain a policy and practice that provides or permits its employees to take off-duty rest periods as required by California law. Employees are entitled to at least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code §226.7, §512 and the Wage Order.

Claimant explains that he and his coworkers would sometimes experience late or interrupted rest periods. During night shifts, Claimant missed a rest period 3-4 times per week. Additionally, rest breaks did not comply with California law because employees were denied adequate rest facilities, including clean bathrooms, and potable water.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed, untimely rest, interrupted, or noncompliant rest periods) mandated by Labor Code §226.7 (b). As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a) and §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Potable Drinking Water

Rest breaks did not comply with state laws as required by Labor Code §226.7 for numerous reasons, including because employees were denied sufficient potable water.

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of “potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge.” 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups. Claimant and aggrieved employees were not provided with adequate potable drinking water, not nearly sufficient to meet the needs of the large number of employees working throughout the duration of the shift.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field

sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Legally Compliant Bathrooms

Rest breaks did not comply with state laws as required by Labor Code §226.7 because workers had to deal with filthy bathroom conditions due to Employer’s failure to maintain clean bathrooms. Bathrooms were often dirty and lacked toilet paper and seat covers, with overflowing trash bins and cockroaches.

California Labor Code §2350 requires employers to provide clean restroom facilities. Employer violated §2350 by failing to provide and maintain sanitary bathrooms for employees.

Cal. Code Regs. tit. 8, § 3457 requires that “[t]oilet facilities shall be, at all times, operational, maintained in a clean and sanitary condition, and kept in good repair. Written records of service and maintenance shall be maintained and retained for two years.” Labor Code §6712 requires toilets to be “serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.” Moreover, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.” Labor Code §6712. Further, the public policy of the State of California as codified, expressed and mandated in Labor Code sections 6300, 6310 and 6400, et seq. requires all employers to take reasonable steps to provide a safe and secure workplace. Unfortunately, bathrooms in Employer’s workplaces were filthy, unsanitary, and non-compliant with minimum standards. The toilets were often leaky and the floor unsafely wet with puddles.

Employer failed to pay Claimant and similarly situated employees the premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on any paystubs. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Accordingly, because Employer violated Wage Order provisions requiring rest breaks, Employer violated §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* As a derivative claim, Claimant alleges that his pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a), resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

Failure to Provide Safe Working Conditions **(Cal. Labor Code §1198, Wage Order)**

Employer’s workplaces would get unsafely hot due to Employer’s lack of adequate climate control in the facilities. Claimant explains that it was hot like an oven working for Employer because inadequate precautions were implemented in the cement mixing process resulting in employees frequently getting burned and exposed to high heat. The heat in the facility was so extreme that it damaged Claimant’s cell phone.

The Wage Orders require:

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

By violating the wage order, Employer is liable pursuant to LC §1198 and for civil penalties pursuant to §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful. Cal. Labor Code § 6407 provides that every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Employer created and maintained an unsafe work environment in various ways. Employer did not require employees to have forklift licenses to operate forklifts, creating a safety hazard. Forklifts would also sink when it rained making operating the forklifts dangerous. Claimant also describes the assembly line as having pallets shifting with pieces coming out creating a hazard, as well as a poor foundation resulting in vehicles sinking and requiring tow trucks. Bathrooms and toilets were consistently leaking resulting in puddles and slipping hazards. The kitchen area was also sometimes flooded, and rats and cockroaches were often found in the kitchen. Dirt and dust would be prevalent impacting the air quality. Employer employed their

employees under unsafe conditions violative of Cal-OSHA regulations and the Health and Safety Code. As a result of these practices, Employer violated Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, and 6407 for failure to provide a safe and healthful environment for employees, as outlined above. Employer is liable for civil penalties pursuant to Cal. Labor Code §2699 *et seq.*

Failure To Provide Suitable Seating
(Lab. Code section 1198 and Wage Orders)

Labor Code section 1198 states, in pertinent part, “The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful.”

The pertinent Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by the applicable Wage Order. Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at positions which would reasonably permit the use of seating. Accordingly, Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Reimburse for Required Business Expenses
(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties.

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, including taking photos of their worksites to send to upper management. Claimant explains that he was required to take and transmit these photos every day and he also observed his coworkers complying with the same requirements. Employees also were required to purchase steel-toed boots. Employees were not compensated for any of these expenses. Accordingly, Employers are liable for civil penalties under PAGA §2699 *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 have not accurately reflected actual gross wages earned, the correct overtime hourly rate, and total hours worked. They also failed to state meal and rest period penalty payments, and reimbursements for shoes and the regular use of employee phones. 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 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,


Nazo Koulloukian, Esq.
Attorney for Claimant