

June 19, 2024

Amended PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, CA 95814

<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

**RE: *Daniel Wade and Jose Pineda v. Communications & Power Industries, LLC;
CPI International Acquisition, Inc.***

Amended PAGA Letter: LWDA-CM-1013817-24

To Whom It May Concern:

This office represents Daniel Wade and Jose Pineda (“Claimants”) with respect to their claims under the California Labor Code against Communications & Power Industries, LLC and CPI International Acquisition, Inc. (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Daniel Wade from approximately August 2023 to September 2023 as a non-exempt, hourly-paid employee. Daniel Wade worked as a Plater for Employers and was based out of Employers’ facility located at 1318 Commerce Avenue, Woodland, CA 95776.

Employers employed Jose Pineda from approximately September 2021 to March 2023 as a non-exempt, hourly-paid employee. Jose Pineda worked as a Plater for Employers and was based out of Employers’ facility located at 3111 Fujita St, Torrance, CA 90505.

Employers recently violated California Labor Code section 226(c) by failing to provide to Claimants, “within 21 calendar days from the date of the request[,]” copies of Claimants’ employment records. *Id.* Employers also similarly recently violated California Labor Code sections 432 and 1198.5 by failing to timely permit Claimants to inspect their personnel files and all instruments signed relating to the obtaining or holding of employment. These violations entitle Claimants to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). *See* California Labor Code section 226(f); *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 (permitting an employee

alleging a single violation of the Labor Code under PAGA to also bring PAGA claims against an Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer).

Claimants intend to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimants are seeking penalties on behalf of themselves and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimants’ notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimants’ employment, including but not limited to California Labor Code sections 201, 202, 203, 204, 226 including 226(a-c), 226.7, 432, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”).

The claims made on behalf of Claimants and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimants and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee’s regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee’s regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimants and other Aggrieved Employees to perform work off-the-clock prior to clocking-in and/or after clocking-out for their shifts. Employers failed to compensate Claimants and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimants and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimants and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimants and Aggrieved Employees. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages and overtime wages) to Claimants and Aggrieved Employees.

Employers also failed to pay overtime to Claimants and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers failed to pay Claimants and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO TIMELY PROVIDE COPIES OF CLAIMANTS' RECORDS

"An employer that is required by [the Labor Code] or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer." Labor Code §226(b). An employer who receives a written request to inspect or receive a copy of such records "shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Labor Code §226(c). An employer's failure to comply with Labor Code section 226(c) "entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." Labor Code § 226(f).

California Labor Code section 432 provides that "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request."

California Labor Code section 1198.5 provides that "[e]very current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee." "The employer shall make the contents of those personnel records available for

inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request...”

Claimants’ attorneys have sent Employers Communications & Power Industries, LLC and CPI International Acquisition, Inc. written requests for Claimants’ records pursuant to California Labor Code sections 226, 432, and 1198.5 via certified mail in February 2024 and in April 2024. These requests were signed for by agent and/or employees of Employers. Claimants’ attorneys received corresponding dated and signed mail return receipts. As of the date of this filing, Claimants and/or Claimants’ attorneys have not received responses to the records request letters that were sent months ago, in violation of California Labor Code sections 226, 432, and 1198.5. Employers’ failure to timely respond to Claimants’ requests for records was knowing and intentional given their confirmed receipt of Claimants’ requests.

Claimants and Aggrieved Employees will therefore seek PAGA penalties pursuant to California Labor Code section 2699, penalties pursuant to California Labor Code section 226 including section 226(f), penalties pursuant to California Labor Code section 1198.5 including section 1198.5(f), and attorneys’ fees and costs.

3. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee’s regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimants and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimants and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimants and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers’ policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically

disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimants and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a) and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

4. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimants and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimants and other Aggrieved Employees to work through rest periods. Claimants and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimants and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the event that a rest period was taken, it was frequently interrupted, cut short, or taken late in violation of California law. Moreover, Claimants and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimants and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimants and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimants and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimants and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimants and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimants and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimants and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

5. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employers failed to timely pay all wages earned because Claimants and other Aggrieved Employees were not paid all the wages they were owed including, *inter alia*, overtime compensation, straight time wages, minimum wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant

to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (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, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimants and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS

California Labor Code section 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. During the relevant time period, Employers have failed to maintain accurate records relating to Claimants and other Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 1198.5 and 1174(d).

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to penalties paragraph of the applicable IWC Wage Orders; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its

employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimants and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers.

Accordingly, Employers violated the applicable IWC Order and California Labor Code sections 2800 and 2802. Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to paragraph of the applicable IWC Wage Orders; and attorneys' fees and costs.

9. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimants and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimants and Aggrieved Employees for all straight time wage, minimum wages and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimants and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimants and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

10. EMPLOYER'S OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 25 Cal.App.5th 745 ("*Huff*"), as Aggrieved Employees, Claimants have standing, and intend to pursue civil penalties on behalf of the LWDA against Employers for any and all other Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging

a single violation of the Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimants, as “aggrieved” employees affected by at least one Labor Code violation may, and hereby do, pursue penalties on behalf of LWDA for all Labor Code violations by Employer.

Employers are in direct violation of numerous California wage and hour laws including but not limited to said sections stated above. Claimants hereby provide notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.*, and specifically ask for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimants may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of Sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under Labor Code § 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimants’ intention to file a civil complaint and to bring the appropriate claims under California Labor Code § 2699 on behalf of themselves, the State of California and all Aggrieved Employees should your office not address Employers’ alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Barbara DuVan-Clarke

Barbara DuVan-Clarke, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

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