



INFINITY LAW GROUP

March 11, 2024

VIA CERTIFIED MAIL AND ONLINE SUBMISSION TO THE LWDA

Labor & Workforce Development Agency

By Online Submission

Motive Energy Telecommunications

Attn. Robert J. Istwan, Agent for Service of Process

17260 Newhope Street

Fountain Valley, CA 92708

RE: JONATHAN PRUNER V. MOTIVE ENERGY TELECOMMUNICATIONS

Dear PAGA Administrator:

Infinity Law Group LLP represents Mr. Jonathan Pruner in respect to matters arising out of his employment with Motive Energy Telecommunications Group, Inc., and, as appropriate, any of its parent companies, subsidiaries, or affiliates (hereinafter, "MOTIVE COMPANIES"). All further questions, inquiries, or other communications about this matter should be directed to this firm.

This letter provides notice to MOTIVE COMPANIES on behalf of Mr. Pruner and similarly situated, aggrieved employees pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2699.3. Mr. Pruner is an "aggrieved employee" as defined by Labor Code section 2698 et seq., due to the MOTIVE COMPANIES' numerous violations of the Labor Code, including Labor Code sections 201, 202, 203, 204, 210, 218.6, 226, 226.3, 226.7, 226.8, 246, 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 2698 et seq., 2750.3, 2802, as well as the provisions of the IWC Wage Orders which pertain to the payment of compensation for all hours worked, payment of daily, weekly, and seventh-day overtime compensation, payment of minimum and double-time compensation, and payment of all expense reimbursement due during employment and upon separation of employment; the maintenance of accurate records of hours worked, the provision of legally compliant meal and rest periods; provision of sick leave; the timely payment of wages during employment and upon termination; and the itemized pay statement requirements. As a result of these violations, Mr. Pruner is entitled to damages, interest, penalties, attorneys' fees, costs, and any other relief available under California law, including PAGA. For purposes of this letter, "Aggrieved Employees" should be considered to include all non-exempt employees, including employees misclassified as exempt or independent contractors, of MOTIVE COMPANIES who have worked for MOTIVE COMPANIES during the year preceding Mr. Pruner's termination on June 16, 2023.

This notice is being provided via electronic submission to the California Labor & Workforce Agency ("LWDA") and to MOTIVE COMPANIES via certified mail to their addresses for business operations.

Based on the below summary of the facts and legal theories upon which Mr. Pruner bases his claims, he requests that the LWDA regard this letter as written notice pursuant to California Labor Code

201 Spear Street, Suite 1100, San Francisco, CA 94105

3450 Geary Blvd., Suite 210, San Francisco, CA 94118 | 1020 Aileen St. Lafayette, CA 94549

Tel: 415-426-3580 | Fax: 415-426-3581 | www.infinitylawca.com | info@infinitylawca.com

section 2699.3 of his intent to seek civil penalties against Motive and any parent companies, subsidiaries or affiliates identified as co-defendants prior to and during litigation of this matter.

I. FACTS

a. Background on Motive

Mr. Pruner is informed, believes and thereupon alleges that at all relevant times, Motive Energy Telecommunications Group, Inc. ("Motive Telecom") was a California Corporation with its principal place of business in Fountain Valley, California, and was Mr. Pruner's employer at all times relevant herein. Robert J. Istwan is Chief Executive Officer and President of Motive Telecom. The California Contractors' State License Board ("CSLB") lists Motive Telecom as having CSLB License No. 1011440 (currently active) and lists Mr. Istwan as its CEO and President. Accordingly, Mr. Istwan is individually liable for violations as alleged herein pursuant to Labor Code §§ 558 and 558.1, among other statutes.

Motive Telecom's principal business is telecommunications and electric vehicle charging installation and maintenance. However, Mr. Istwan is also associated with additional companies aligned under the "Motive Infrastructure Solutions" name, including Motive Energy Handshake Corporation, Inc.; Motive Energy Solar, Inc.; Motive Energy Storage Systems, Inc.; Motive Energy, Inc.; and Motive Energy, LLC.¹ Broadly, these companies collectively provide construction, project management, procurement, consulting, and engineering services.

b. Background on Mr. Pruner

Mr. Pruner began working for Motive Telecom in September 2022 earning \$37.00 per hour as a Tower Foreman. His duties required that he drive a company vehicle to pick his crew up in the morning, transport them to a jobsite, perform work at the jobsite, and then transport his crew back to the pickup location. Mr. Pruner's typical workday frequently ran as long as 15 or more hours. Mr. Pruner's employment was terminated on June 16, 2023, after he made various complaints about his wages and being forced to work "off the clock" and after requesting time to attend to his wife's serious medical condition.

As an employee of MOTIVE COMPANIES, Mr. Pruner was not properly paid for his time because, as payroll records show, he was typically paid for only a portion of the time he worked overtime during these long days, including days that would entitle him to double-time pay. As a corollary, Mr. Pruner was not timely paid during his employment or at the conclusion of his employment. Mr. Pruner was also not provided sick leave, nor was he paid for missed meal or rest breaks. And as a result, Mr. Pruner was also not provided with accurate, itemized wage statements.

Mr. Pruner observed that other Aggrieved Employees of Motive Telecom suffered the same long workdays resulting in the same violations of the Labor Code. Mr. Pruner observed that other Aggrieved Employees of MOTIVE COMPANIES employees were not paid properly as a result of these Labor Code

¹ California's Secretary of State website shows that Mr. Istwan is agent for service of process for each company, all of which are active.

violations. More specifically, other Aggrieved Employees were not timely paid during their employment or at the conclusion of their employment. Like Mr. Pruner, these employees were not provided sick leave and were not paid for all hours worked, were not paid for overtime or double-time work, nor were they paid for missed meal or rest breaks. And as a result, these employees were also not provided with accurate, itemized wage statements.

II. LABOR CODE VIOLATIONS

A. Failure to Pay Minimum, Overtime or Double-time Wages

Mr. Pruner and Aggrieved Employees regularly worked or continue to work in excess of eight (8) or twelve (12) hours per day and/or forty (40) hours per workweek and/or on the seventh consecutive day in a given workweek, but Motive Telecom, as a matter of policy, failed and fail to pay all applicable overtime or double-time compensation for all hours actually worked by employees as required by Labor Code §§ 204, 510, 1194, 1194.2 and Industrial Welfare Commission Wage Order 4-2001 (“Wage Order 4-2001”), § 3 and Industrial Welfare Commission Wage Order 16-2001 (“Wage Order 16-2001”), § 3. Motive Telecom simply did not pay proper overtime and double-time rates for these premium hours worked.

B. Failure to Pay Wages Due Upon Termination

As Motive Telecom failed to pay all wages due, including all minimum, overtime and double-time wages, and premium wages for missed and denied meal and rest breaks, upon termination of the employment relationship with Mr. Pruner and Aggrieved Employees, Motive Telecom also willfully failed to pay Mr. Pruner and Aggrieved Employees all wages earned and owed in violation of California Labor Code §§ 201 and 202. Pursuant to § 203 of the Labor Code, Mr. Pruner and Aggrieved Employees are now also entitled to recover up to thirty (30) days of wages due to Motive Telecom’s willful failure to comply with the statutory requirements of sections 201 and 202 of the Labor Code.

C. Failure to Provide Meal Breaks

Motive Telecom failed and continues to fail to maintain a policy that provides Aggrieved Employees with off-duty meal periods as required by California law. Aggrieved Employees regularly work or worked in excess of five (5) hours a day and at times in excess of ten (10) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, Wage Order 4-2001, § 11, and Wage Order 16-2001, § 10. Motive Telecom failed and continues to fail to pay Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed meal periods.

D. Failure to Provide Rest Breaks

Motive Telecom failed and continues to fail to maintain a policy that provides Aggrieved Employees with off-duty rest periods as required by California law. Aggrieved Employees regularly work in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-

minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order 4-2001, § 12, and Wage Order 16-2001, § 11. When they were provided with a rest break, they were interrupted and not permitted to leave the work premises, thus resulting in an impermissible on-duty rest period. Motive Telecom failed and continue to fail to pay Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these missed rest periods.

E. Failure to Furnish Accurate Itemized Wage Statements

Motive Telecom failed to issue accurate and complete wage statements to Mr. Pruner and Aggrieved Employees. As Mr. Pruner and Aggrieved Employees were not paid all wages due for all minimum, overtime and double-time wages, and premium wages for missed and denied meal and rest breaks, as discussed above, the wage statements fail to set forth all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

Moreover, and independent of the above allegations, Motive Telecom has violated and continues to violate California Labor Code § 226(a) by willfully failing to furnish Mr. Pruner and Aggrieved Employees with accurate, itemized wage statements showing the actual hours worked on a daily basis and properly distinguishing overtime from non-overtime work, in violation of Labor Code § 226(a)(2) and (a)(9), respectively.

F. Failure to Pay All Wages in a Timely Fashion

Motive Telecom consistently failed and continue to fail to pay Mr. Pruner and Aggrieved Employees all wages earned and owed within the time periods specified in Labor Code §§ 204(d) and 210 twice each calendar month on the regular paydays, including, but not limited to, overtime wages, minimum wages, wages for missed meal periods, and wages for missed rest periods.

G. Failure to Provide Sick Leave

Motive Telecom failed and continue to fail to notify Mr. Pruner and Aggrieved Employees of their right to take sick leave. Further, Motive Telecom failed and continues to fail to provide paid sick leave to Mr. Pruner and Aggrieved Employees in violation of Labor Code §§ 246 and 248.5.

H. Failure to Keep Accurate Payroll Records of Daily Hours Worked

Motive Telecom failed and continue to fail to maintain adequate payroll and time-clock records showing the total hours worked daily and wages paid to employees in violation of Labor Code § 1174.

III. CONCLUSION

Motive Telecom's violations, including those of Mr. Istwan, were extensive, voluminous, and not subject to simple itemization. As in the ordinary course, it is understood that additional legal implications of the above violations under the California Labor Code and/or applicable Wage Orders are evident from

or derivative from the facts referenced in this letter or the circumstances of Mr. Pruner's employment. It is the intention of Mr. Pruner to pursue penalties and other available relief in connection with all such claims regardless of whether specifically itemized here.

As a result of the foregoing violations, Motive Telecom and Mr. Istwan are liable for civil penalties, including but not limited to, those available pursuant to California Labor Code §§ 210, 226.3, 558, 1174.5, and 2698 et seq. Pending a full investigation, any later discovered violations may also be subject to our enforcement.

This notice is provided pursuant to Labor Code section 2699.3 and hereby provides the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate. We respectfully request a timely response as to the LWDA's decision(s), as required by Labor Code section 2699.3. In view of the duties imposed on your agency and this office by the statutes cited above, please be advised we will advance our calendars sixty-five (65) days of the date of this letter.

If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. Pfeilschifter', with a long horizontal line extending to the right.

Paul K. Pfeilschifter, Esq.
Infinity Law Group LLP