STANSBURY BROWN
LAW PC

March 1, 2024

VIA LWDA WEBSITE

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

Re: *Ignacio Elias v. CES Cleaning Contractors, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Ignacio Elias in claims for Labor Code violations arising from his employment with CES Cleaning Contractors, LLC ("CES") and DOES 1 through 100 (collectively "CES"). Mr. Elias is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to CES' 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.

CES employ aggrieved employees in the sanitation and meat production industries. Mr. Elias worked for CES from approximately July 19, 2023 until his termination on July 26, 2023 after he sustained a work-related injury. Mr. Elias' job duties included cleaning and sanitizing the facilities he was assigned to work in. Mr. Elias worked approximately five or six days over the course of one week and began and ended his work day at varying times of the day based on the instructions of his supervisors. Mr. Elias could be scheduled to start his work day at 4:00 p.m., 5:00 p.m. or at another time. Mr. Elias' daily hours worked would range from anywhere between 8 and 15.5 hours per shift depending on how long it took to clean the facility.

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

Throughout the duration of Mr. Elias' employment with CES, Mr. Elias and other aggrieved employees were not paid for all hours worked as CES would not accurately keep track of their actual hours worked. Upon information and belief, the time records maintained by CES were not reflective of the actual number of hours that Mr. Elias and other aggrieved employees actually worked. Upon information and belief, Mr. Elias' supervisors wrote down in a notebook his hours worked and the hours worked of other aggrieved employees. The hours recorded by CES did not reflect that Mr. Elias and other aggrieved employees arrived approximately one hour before their scheduled start times and continued working at least approximately fifteen (15) or twenty (20) minutes beyond the recorded end time. Prior to his scheduled start time, Mr. Elias spent approximately ten (10) to fifteen (15) minutes waiting in line to pass through security. Mr. Elias also spent another ten (10) minutes walking from security to his work area. Upon arrival at his work area, Mr. Elias often spent several minutes searching for protective gear to wear as he would not find his protective gear in the location that he left it in the day before. Mr. Elias spent approximately ten (10) minutes putting on his protective gear which included a jacket, boots, a helmet and plastic gloves. At the end of the work day, the supervisor told Mr. Elias and other aggrieved employees when they could leave and then wrote down their end times. After the time recording, Mr. Elias spent about fifteen (15) to twenty (20) minutes removing his protective gear, walking to security and waiting in line in security before accessing the parking lot. Mr. Elias and other aggrieved employees were also told that they would receive four (4) to six (6) hours of pay for training at a further location in Hanford on the date of their interviews. Mr. Elias and other aggrieved employees were not compensated for this time.

Furthermore, Mr. Elias and other aggrieved employees worked overtime hours, but did not receive overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. Upon information and belief, CES systematically failed to pay overtime compensation due to Mr. Elias and other aggrieved employees when they worked the requisite number of hours to be entitled to such pay. Instead, Mr. Elias and other aggrieved employees would either be paid their normal hourly rate for overtime hours worked, or simply not paid for these hours worked at all. As an example, Mr. Elias received one paycheck in the amount of $871.37. This amount divided by Mr. Elias' hourly rate of $18.50 results in approximately 47 hours. As Mr. Elias states that he worked between 8 hours and 15.5 hours each day over a period of approximately one week, the paycheck does not account for Mr. Elias' overtime worked. As a result, CES failed to ensure that Mr. Elias and other aggrieved employees were being paid at least the minimum wage for all hours actually worked, and failed to ensure that Mr. Elias and other aggrieved employees received proper overtime wages for all overtime hours worked.

Mr. Elias and other aggrieved employees were not authorized to take all legally required rest periods free of employer control during the entirety of Mr. Elias' employment with CES. Mr. Elias and other aggrieved employees were only authorized to take one 10-minute rest period during their 8-15.5-hour shifts, if at all. Even though Mr. Elias and other aggrieved employees often worked more than ten (10) hours in a work day, they were not authorized to take a second or third 10-minute rest period. Despite CES' failure to authorize and permit Mr. Elias and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, CES never provided Mr. Elias and other aggrieved 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, CES maintained no payroll code or mechanism for the payment of rest period premiums in the event Mr. Elias and other aggrieved employees were not authorized to take lawful rest periods.

CES also did not always provide Mr. Elias and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 6.0 hours. Sometimes Mr. Elias' supervisors told Mr. Elias and other aggrieved employees that they would not get a meal period because they needed to clean the machines by a specific time. Other times, if Mr. Elias and other aggrieved employees received a meal period, the meal period was less than thirty minutes because Mr. Elias and other aggrieved employees removed their protective gear to take their meal periods and then spent several minutes of that time looking for protective gear to put back on prior to returning to work after the meal period. Furthermore, to the extent that Mr. Elias and other aggrieved employees were authorized to exercise their first meal periods, they were not allowed to leave the premises for their meal periods, thus making them inherently non-compliant. Additionally, even though Mr. Elias and other aggrieved employees worked shifts in excess of ten (10) hours, Mr. Elias and other aggrieved employees were almost never permitted to exercise their right to a second meal period. Despite CES' failure to provide Mr. Elias and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, CES never provided Mr. Elias and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7.

Additionally, CES forced Mr. Elias to wait several days for his final paycheck, in violation of Labor Code § 201.

As a result of CES' failure to accurately compensate Mr. Elias and other aggrieved employees for all overtime wages, and failure to provide all required meal periods and authorize all rest periods or pay premium pay in lieu thereof, CES have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, failed to timely pay employees at the time of their separation of employment, and wholly failed to issue wage statements. Instead, CES would pay Mr. Elias and other aggrieved employees with personal checks that failed to conform with the wage statement requirements as set forth in Labor Code § 226(a).

CES failed to issue to Mr. Elias and other aggrieved 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 (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.

Also, CES failed to reimburse Mr. Elias and other aggrieved employees for all business expenses.

CES failed to meet their obligations to provide paid sick leave under Labor Code

§ 245.5(b) which requires that employers authorize and permit their 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, CES failed to provide paid sick leave on those occasions where its employees needed to take a "sick day" in violation of Labor Code § 245.5(b).

Furthermore, CES violated Labor Code § 204 by failing to pay Mr. Elias and other aggrieved employees all wages earned at least twice during each calendar month.

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

As described above, CES committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 5 ("IWC Wage Order 5"):

<u>Minimum Wage Violations</u>

CES were required to pay Mr. Elias 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 5 § 4. As alleged above, CES maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by Mr. Elias and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, Mr. Elias and other aggrieved employees were deprived of all required minimum wages.

<u>Overtime Wage Violations</u>

CES were required to pay Mr. Elias and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and Wage Order 5. Wage Order 5, § 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, CES caused Mr. Elias and other aggrieved employees to work overtime hours but did not compensate Mr. Elias and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, CES failed to provide Mr. Elias and other aggrieved employees with all required and compliant meal periods due to CES' meal period policies/practices that often fail to provide 30 minute duty-free first meal periods before the end of the fifth hour of work and 30 minute off-duty second meal periods before the end of the tenth hour of work. *See* Labor Code §§ 226.7 and 512; and Wage Order 5, § 11. As a result, Mr. Elias 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, CES also failed to authorize and permit Mr. Elias and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. As a result, Mr. Elias 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

CES was 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." CES was 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 CES' unlawful reimbursement practices, CES failed to indemnify Mr. Elias and other aggrieved employees for all necessary business expenses incurred in the performance of their work duties. Mr. Elias and other aggrieved employees were not ever provided any reimbursement for these necessary uses.

<u>Wage Statement Violations</u>

CES were required to furnish Mr. Elias 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 5, § 7. CES wholly failed to provide wage statements to Mr. Elias and other aggrieved employees in violation of Labor Code § 226.

<u>Waiting Time Penalties</u>

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. CES failed to timely pay Mr. Elias and other aggrieved employees all of their final wages at the time of separation, which included all overtime wages and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, CES' failure to pay all final wages due to Mr. Elias and other aggrieved employees was willful and, consequently, entitles Mr. Elias and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day CES failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Elias 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. Elias' own investigation, and on information and belief, CES committed and continue to commit the following Labor Code violations:

a. CES violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Elias and other aggrieved employees the statutory minimum wage for all hours worked;

b. CES violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Elias and other aggrieved employees all overtime compensation earned;

c. CES 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. Elias and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

d. CES violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Elias and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to Mr. Elias and other aggrieved employees at their respective regular rates of compensation;

e. CES violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Elias and other aggrieved employees for all work-related expenses incurred;

f. CES violated Labor Code § 226 by failing to furnish Mr. Elias and other aggrieved employees with accurate and compliant itemized wage statements;

g. CES violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to Mr. Elias and other aggrieved employees;

h. CES violated Labor Code § 204 by failing to pay Mr. Elias and other aggrieved employees all wages earned at least twice during each calendar month;

i. CES violated Labor Code § 205 by failing to pay Mr. Elias and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday

j. CES violated Labor Code § 245.5 by failing to permit and authorize aggrieved employees to exercise the use of their accrued paid sick leave days;

k. CES violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Mr. Elias and other aggrieved employees;

l. CES violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of Mr. Elias and other aggrieved employees; and

m. CES violated Labor Code §§ 221 and 227.3 by maintaining a policy of requiring unlawful forfeitures by Mr. Elias and other aggrieved employees of vested vacation benefits.

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

Jess Flores

Jessica Flores

cc: CES Cleaning Contractors, LLC (via certified mail)