STANSBURY BROWN
LAW PC

May 28, 2024

<u>VIA LWDA WEBSITE</u>

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

Re: *Jonathan Quenga v. Scorpion Services, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Jonathan Quenga ("Mr. Quenga") in claims for Labor Code violations arising from his employment with Scorpion Services, Inc. ("Scorpion"); and DOES 1 through 100 (collectively referred to herein as "Employers"). Mr. Quenga is an "aggrieved employee" as defined by Labor Code Section 2698 *et seq*., due to Employers' 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.

Employers are in the business of providing security services. Mr. Quenga worked for Employers from approximately April 4, 2022 to approximately July 30, 2023. Mr. Quenga was a security guard tasked with providing security services at a residential complex, patrolling the premises, responding to disturbances and observing and reporting the conditions on the premises. Mr. Quenga generally worked from Wednesday through Sunday from approximately 11:00 p.m. to 7:00 a.m. or approximately 7:00 p.m. to 7:00 a.m.

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

Throughout the duration of Mr. Quenga's employment with Employers, Mr. Quenga and other aggrieved employees were not paid for all hours worked as Employers did not accurately keep track of all hours worked. Upon information and belief, the time records maintained by Employers were not reflective of the actual number of hours that Mr. Quenga and other aggrieved employees actually worked. Mr. Quenga and other aggrieved employees clocked in to work through an app on their phones. Mr. Quenga and other aggrieved employees were generally required to arrive at work every day prior to their start times. For example, if Mr. Quenga was scheduled to start his shift at 11:00 p.m., his employer approached him with questions. During this time, Mr. Quenga also covered some of the closing duties of other aggrieved employees finishing their shifts. Mr. Quenga and other aggrieved employees spent at least approximately 20 to 40 minutes per work day approximately 5 days per week performing work prior to beginning their shifts.

Furthermore, Mr. Quenga and other aggrieved employees worked overtime hours, but did not receive all overtime compensation equal to one and one-half times their regular rates of pay for all overtime hours worked. As discussed above, Employers maintained a policy/practice of not compensating Mr. Quenga and other aggrieved employees for their work performed before their pre-scheduled start times even though that time generally constituted time worked beyond 8 hours in one day. As a result, Employers failed to ensure that Mr. Quenga and other aggrieved employees were being paid at least the minimum wage for all hours worked, and failed to ensure that Mr. Quenga and other aggrieved employees received proper overtime wages for all overtime hours worked.

Mr. Quenga and other aggrieved employees were not authorized to take all legally required rest periods. This practice was pervasive throughout Mr. Quenga's employment. Mr. Quenga and other aggrieved employees almost never received a full, uninterrupted rest period because there was no one available to cover or relieve them during their shifts and they were regularly interrupted to address security alerts or concerns raised by residents and/or their employer. Employers also instructed Mr. Quenga and other aggrieved employees that they had to be available to address concerns raised and security alerts and therefore, when they took their rest periods, they could not leave the premises. Also, Employers required Mr. Quenga and other aggrieved employees to clock in and out for their rest periods even though they rarely received a full rest period. Even though Mr. Quenga often worked more than 10 hours in one day, Mr. Quenga almost never received a full, uninterrupted first, second or third rest period throughout his employment with Employers. Despite Employers' failure to authorize and permit Mr. Quenga and other aggrieved employees to take all lawful paid rest periods, due to their uniform and unlawful practices, Employers never provided Mr. Quenga 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, during at least a portion of the class period, Employers maintained no payroll code or another mechanism for the payment of rest period premiums in the event Mr. Quenga and other aggrieved employees were not authorized to take lawful rest periods.

Employers also almost never provided Mr. Quenga and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10.0 hours. As described above, Employers instructed Mr. Quenga and other aggrieved employees that they could not leave the premises for their meal periods because they had to be available to address security alerts and concerns raised by residents and Employers. Further, Mr. Quenga and other aggrieved employees were interrupted daily during their meal periods with alerts and concerns requiring immediate attention and thus almost never received a full, uninterrupted 30-minute meal period. Despite Employers' failure to provide Mr.

Quenga and other aggrieved employees with all lawful meal periods due to their uniform and unlawful practices, Employers never provided Mr. Quenga 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.

Furthermore, Employers failed to adequately reimburse Mr. Quenga and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, requiring Mr. Quenga and other aggrieved employees to use their personal cell phones to clock in and out and call in security alerts and to purchase work pants beyond the initial set of work pants issued.

Employers have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of Employers' failure to accurately compensate Mr. Quenga and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all rest periods.

Employers failed to issue to Mr. Quenga 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.

Employers failed to meet their obligations to provide paid sick leave to Mr. Quenga and other aggrieved employees 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, Mr. Quenga and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a "sick day" in violation of Labor Code § 245.5(b), did not accrue sick leave as required, and were not notified of properly notified of their ability to take sick leave.

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

As described above, Employers committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Minimum Wage Violations

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

Overtime Wage Violations

Employers were required to pay Mr. Quenga and other aggrieved employees overtime wages for all overtime hours worked. *See* Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. Wage Order 4, § 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, Employers caused Mr. Quenga and other aggrieved employees to work overtime hours but did not compensate Mr. Quenga and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, Employers failed to provide Mr. Quenga and other aggrieved employees with all required and compliant meal periods due to Employers' meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. As a result, Mr. Quenga 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, Employers also failed to authorize and permit Mr. Quenga and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 4, § 12. As a result, Mr. Quenga 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

Employers were 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.” Employers were 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 Employers’ unlawful reimbursement practices, Employers failed to indemnify Mr. Quenga and other aggrieved employees for all necessary business expenses incurred, including, utilization of personal cell phones to clock in and out and call in security alerts and the purchase of work pants beyond the initial set of work pants issued. Mr. Quenga and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, Employers were required to furnish Mr. Quenga 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 4, § 7. As a result of Employers’ failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period premium wages, Employers maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Quenga and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Daniel J. Brown

cc: Scorpion Services, Inc. (via certified mail)