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Wage-and-Hour and Consumer Class Actions and Complex Litigation

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May 16, 2024

BY ONLINE SUBMISSION
PAGA Administrator
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BY CERTIFIED MAIL

NATIONAL STEEL & SHIPBUILDING COMPANY
c/o 1505 Corporation CT CORPORATION SYSTEM
330 N BRAND BLVD SUITE 700
GLENDALE, CA 91203

BY CERTIFIED MAIL

GENERAL DYNAMICS LAND SYSTEMS INC.
c/o 1505 Corporation CT CORPORATION SYSTEM
330 N BRAND BLVD SUITE 700
GLENDALE, CA 91203

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GENERAL DYNAMICS ORDNANCE AND TACTICAL SYSTEMS, INC.
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GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC.
c/o 1505 Corporation CT CORPORATION SYSTEM
330 N BRAND BLVD SUITE 700
GLENDALE, CA 91203

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GENERAL DYNAMICS MISSION SYSTEMS, INC.
c/o 1505 Corporation CT CORPORATION SYSTEM
330 N BRAND BLVD SUITE 700
GLENDALE, CA 91203

Re: Jorge Rivera v. NATIONAL STEEL & SHIPBUILDING COMPANY, et al.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*) JORGE RIVERA ("JORGE RIVERA") hereby provides notice on behalf of himself and on behalf of all similarly situated current and former employees in California (the "aggrieved employees") who were employed by NATIONAL STEEL AND SHIPBUILDING COMPANY and/or GENERAL DYNAMICS LAND SYSTEMS INC. and/or GENERAL DYNAMICS ORDNANCE AND TACTICAL SYSTEMS INC. and/or GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC. and/or GENERAL DYNAMICS MISSION SYSTEMS, INC. directly or indirectly whether through any staffing agencies and/or any other third parties (collectively referred to as "Defendants") who worked in hourly, non-exempt positions for alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 1194, 1197, and 1197.1.

JORGE RIVERA is an individual who was employed by Defendants in an hourly, non-exempt position as a Chip feeder/Journeyman from approximately November 2004 through June 1, 2023. At all relevant times, Defendants employed persons, conducted business in, and engaged in illegal labor and payroll practices and policies in California.

JORGE RIVERA and aggrieved employees are "employees" within the meaning of Section 2 of the applicable Industrial Welfare Commission Wage Order (the "Wage Order") and "aggrieved employees" within the meaning of Labor Code section 2699(c). At all relevant times, JORGE RIVERA and aggrieved employees have been non-exempt employees entitled to the full protections of both the Labor Code and the Wage Order. JORGE RIVERA's representation of "aggrieved employees" is brought with the information and belief that the labor code violations discussed in this notice are systematic, ongoing, repeated, and will continue.

As set forth below, Defendants failed to comply with the Labor Code sections as described herein below. Accordingly, JORGE RIVERA now seeks civil penalties for Defendants' alleged violations of the Labor Code.

FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 204, 223, 226.7, 512 and 1198)

Labor Code section 204 provides that all wages (except as provided under Labor Code sections 201, 201.3, 202, 204.1 and 204.2) earned by any person in any employment become due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays, except that 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.

Labor Code section 223 states:

> Where any statute or contract requires an employer to maintain the designated wage

> scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

Section 2 of the Wage Order states:

> "Hours worked" means 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.

Labor Code section 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and that standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code section 512 states:

> An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Section 11 of the Wage Order states:

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relived 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. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
>
> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the

> employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

Plaintiff and the aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) practice of requiring Plaintiff and the aggrieved employees to undergo a security check during a portion of their meal periods.

When leaving the premises for their meal period or rest break, Plaintiff and the aggrieved employees were required to go through a bag check. Plaintiff and the aggrieved employees were required to wait in line while a security guard searched their bags and or their person for company property. This process could take as long as five minutes.

As Plaintiff and the aggrieved employees were only allotted thirty (30) minutes for each meal period and were required to go through Defendants' security check to re-enter the premises, the practical effect of Defendants' policy resulted in Plaintiff and the aggrieved employees staying on the premises and otherwise not exercising their right to leave the premises as it would intrude on their meal periods.

As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' requirements that required Plaintiff and the aggrieved employees to utilize a portion of their meal periods to comply with Defendants' security check requirements.

Defendants' written policies failed to advise JORGE RIVERA and the aggrieved employees of their legal rights to take meal periods in accordance with California law. Specifically, Defendants have a policy and/or practice of requiring JORGE RIVERA and the aggrieved employees to take their meal periods after the fifth hour of work. Also, JORGE RIVERA and the aggrieved employees were required to clock out for meal periods even though they continued to perform work with the full knowledge of their supervisors. Accordingly, JORGE RIVERA and the aggrieved employees were not provided with legally mandated uninterrupted meal periods of at least thirty minutes pursuant to California law.

In addition, JORGE RIVERA and the aggrieved employees did not execute valid on-duty meal period waivers that complied with California law. Therefore, JORGE RIVERA and the aggrieved employees were not provided with an uninterrupted, duty-free meal period of at least thirty minutes.

Defendants also failed to advise JORGE RIVERA and the aggrieved employees of their legal right to take a second meal period when they worked shifts of ten hours or more.

In addition, at time when JORGE RIVERA and the aggrieved employees were not timely provided with a meal period, Defendants failed to pay them legally required premium wages. These failures result, in part, from policies and practices that lack adequate safeguards to ensure that employees are relieved of all duty for meal periods and are paid additional wages when meal periods are not provided.

JORGE RIVERA and the aggrieved employees were not subject to valid on-duty meal period agreements with Defendants. California law requires that meal period waivers be documented in a written agreement that is voluntarily signed by both the employee and employer. The written agreement must state that the employee may, in writing, revoke the agreement at any time. (8 Cal. Code Regs. § 11040). JORGE RIVERA and the aggrieved employees did not execute lawful meal period waivers in accordance with California law.

Accordingly, JORGE RIVERA now seeks civil penalties for these Labor Code violations that Defendants have committed against him and aggrieved employees as follows:

(1) For all initial violation of Labor Code section 204, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 210);

(2) For all subsequent violation of Labor Code section 204, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 210);

(3) For all initial violations of Labor Code section 223, that are deemed to be neither willful nor intentional, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 225.5);

(4) For all initial violation of Labor Code section 223 that are deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(5) For all subsequent violations of Labor Code section 223, regardless of whether the initial violation of Labor Code section 223 is deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(6) For all initial violations of Labor Code sections 226.7 and 1198, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(7) For all subsequent violations of Labor Code sections 226.7 and 1198, $200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(8) For all initial violations of Labor Code section 512, $50 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 558(a)(1));

(9) For all subsequent violations of Labor Code section 512, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 558(a)(2)).

FAILURE TO PROVIDE REST PERIODS
(Lab. Code §§ 204, 223, 226.7 and 1198)

Labor Code section 204 provides that all wages (except as provided for under Labor Code sections 201 and 202) earned by any person in any employment become due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays, except that 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.

Labor Code section 223 states:

> Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

Section 2 of the applicable Wage Order states:

> "'Hours worked' means the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

Labor Code section 1198 states:

> The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Section 12 of the applicable Wage Order states:

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provision of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

In addition, Labor Code section 226.7 states:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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.

Plaintiff and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) practice of requiring Plaintiff and the aggrieved employees to undergo a security check during a portion of their rest periods.

When leaving the premises for their rest break, Plaintiff and the aggrieved employees were required to go through a bag check. Plaintiff and the aggrieved employees were required to wait in line while a security guard searched their bags and or their person for company property. This process could take as long as five minutes.

As Plaintiff and the aggrieved employees were only allotted ten (10) minutes for each rest break and were required to go through Defendants' security check in order to re-enter the premises, the practical effect of Defendants' policy resulted in Plaintiff and the aggrieved employees staying on the premises and otherwise not exercising their right to leave the premises as it would intrude on their rest periods.

As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to complying with Defendants' requirements that required Plaintiff and the aggrieved employees **to** utilize a portion of their rest periods to comply with Defendants' security check requirements.

Defendants' written policies failed to advise JORGE RIVERA and the aggrieved employees of their legal right to take rest period in accordance with California law. Specifically, Defendants have a policy of requiring JORGE RIVERA and the aggrieved employees to clock in and out for rest periods.

Accordingly, JORGE RIVERA and the aggrieved employees were not provided with legally mandated rest periods of at least ten minutes for every four hours worked or major fraction thereof.

As a result of these policies and practices, Defendants failed to provide JORGE RIVERA and the aggrieved employees with net rest periods of at least ten minutes for each four hour work period, or major fraction thereof, and have failed to pay them premium wages at their regular rates of pay on workdays they failed to provide them with required rest periods. Defendants' policies and practices lack adequate safeguards to ensure that employees are relieved of their duties for all required rest periods and are paid additional wages when rest periods are not provided.

Accordingly, JORGE RIVERA now seeks civil penalties for these Labor Code violations that Defendants have committed against him and aggrieved employees as follows:

(1) For all initial violation of Labor Code section 204, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 210);

(2) For all subsequent violation of Labor Code section 204, \$200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 210);

(3) For all initial violations of Labor Code section 223, that are deemed to be neither willful nor intentional, \$100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 225.5);

(4) For all initial violation of Labor Code section 223 that are deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(5) For all subsequent violations of Labor Code section 223, regardless of whether he initial violation of Labor Code section 223 is deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(6) For all initial violations of Labor Code sections 226.7 and 1198, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(7) For all subsequent violations of Labor Code sections 226.7 and 1198, $200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2)).

FAILURE TO PAY HOURLY AND OVERTIME WAGES
(Lab. Code §§ 204, 223, 510, 1194, 1197 and 1198)

Labor Code section 204 provides that all wages (except as provided for under Labor Code sections 201 and 202) earned by any person in any employment become due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays, except that 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.

Labor Code section 223 states:

> Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

Section 2 of the applicable Wage Order states:

> "Hours worked" means the time during which an employee is subject to the control of the employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

Section 4 of the applicable Wage Order states:

> (A) Every employer shall pay to each employee wages not less than the following:
>
> (1) Any employer who employs 26 or more employees shall pay to

each employee wages not less than the following:

(a) Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2019; and

(b) Thirteen dollars ($13.00) per hour for all hours worked, effective January 1, 2020;

(2) Any employer who employs 25 or fewer employees shall pay to each employee wages not less than the following:

(a) Eleven dollars ($11.00) per hour for all hours worked, effective January 1, 2019.

(b) Twelve dollars ($12.00) per hour for all hours worked, effective January 1, 2020.

(B) Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, place, commission, or otherwise.

Labor Code section 1194 states, in relevant part:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code section 1197 states, in relevant part:

The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

Labor Code section 1198 states, in relevant part:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Section 3 of the applicable Wage Order states, in relevant part:

(A) Daily Overtime – General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess o eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7^{th}) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7^{th}) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary."

In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knows or reasonably should know that employees are working during those hours. *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 585 (2000).

Meal Periods

As a result of their failures to provide meal periods in accordance with California law and to accurately record the starting and stopping times of all work periods, Defendants failed to compensate JORGE RIVERA and the aggrieved employees with all hourly and overtime wages for time spent working during unpaid meal periods.

At all relevant times during the applicable limitations period, Defendants automatically deducted one-half hour from the timecards of JORGE RIVERA and the aggrieved employees on every workday for a meal period, regardless of whether or not they were permitted to take such a meal period. As a result of this "auto-deduct" policy, JORGE RIVERA and the aggrieved employees routinely performed off-the-clock work that Defendants either knew or should have known they were performing.

When leaving the premises for their meal period, Plaintiff and the aggrieved employees were required to go through a bag check. Plaintiff and the aggrieved employees were required to wait in line while a security guard searched their bags and or their person for company property. This process could take as long as five minutes.

As Plaintiff and the aggrieved employees were only allotted thirty (30) minutes for each meal period and were required to go through Defendants' security check in order to re-enter the premises, the practical effect of Defendants' policy resulted in Plaintiff and the aggrieved employees staying on the premises and otherwise not exercising their right to leave the premises as it would intrude on their meal periods.

As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' requirements that required Plaintiff and the aggrieved employees to utilize a portion of their meal periods to comply with Defendants' security check requirements.

Regular Rate of Pay

The regular rate of pay under California law includes "all remuneration for employment paid to, on behalf of, the employee." DLSE Opinion Letter 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited to, commissions and non-discretionary bonuses. *See, e.g., Huntington Memorial Hospital v. Superior Court*, 131 Cal. App. 4th 893, 904 (2005).

At all relevant times, Defendants violated the above-referenced Labor Code sections by failing to pay JORGE RIVERA and the aggrieved employees for all hours worked, including, but not limited to, overtime hours and premiums paid for meal and/or rest break violations. While employed by Defendants, JORGE RIVERA and the aggrieved employees received hourly wages and other remuneration, including, but not limited to, commissions and non-discretionary bonuses and/or other applicable remuneration that must be included when calculated their regular rates of pay. However, Defendants consistently failed to include all applicable forms of remuneration when calculating their regular rates of pay. As a result, any overtime wages and/or premiums paid for meal and/or rest break violations paid to JORGE RIVERA and the aggrieved employees were not paid at the regular rate of pay.

Employees regularly worked thirty minutes to one hour of overtime each day. Accordingly, Defendants have not factored in this time when calculating his regular rate of pay.

Off-the-Clock Work

During the applicable limitations period, JORGE RIVERA and the aggrieved employees had to work off-the-clock because they were not paid for all hours worked including, but not limited to, Defendants failing to pay them for travel time, automatically deducting time taken out of their paychecks whether or not they took meal periods, were required to wear protective and/or sanitary gear in the regular course of business. Defendants failed to pay JORGE RIVERA and the aggrieved employees for time spent putting on and taking off the protective and/or sanitary gear at the beginning and end of each work shift. This process could take as long as fifteen to twenty minutes per day – time which was unpaid by Defendants.

Plaintiff and the aggrieved employees were required to utilize the general entrance to the facility and required to go through a security check at the time of entering and leaving the premises on which they worked. The security check required Plaintiff and the aggrieved employees to first wait in a general-purpose line and show their ID badge to a security guard. After showing their ID badge to a security guard, they would then need to wait in line and pass through a turnstile door where they again scanned their badge to pass through. If their badge was not working, the security guard would print a new badge and provide it to Plaintiff and the aggrieved employees before they continued through the turnstile gate.

Plaintiff and the aggrieved employees were required to spend at least two to five minutes each time they went through the security check in order to clock in—time that was not paid by Defendants.

Plaintiff and the aggrieved employees were required to go through the security check prior to clocking in at the beginning of each work shift and were required to clock out first at the end of each work shift prior to going through the security check.

Based on the above, Defendants' security check practices have resulted in substantial amounts of time not recorded as hours worked therefore resulting in substantial amounts of wages not paid to Plaintiff and the aggrieved employees.

Plaintiff and the aggrieved employees would work scheduled shifts. Plaintiff and the aggrieved employees were allowed to clock in prior to the start of their scheduled shift, however Plaintiff and the aggrieved employees would not begin to be paid until the scheduled time of the commencement of their shift.

Further, Plaintiff and aggrieved employees were required to don their protective equipment including a hard hat, safety glasses, and gloves, before commencing their work. The safety equipment was in the locker room near the entrance of the premises. Plaintiff and the aggrieved employees were required to begin work at the start of their scheduled shift. Thus, Plaintiff and the aggrieved employees were required to arrive before their scheduled start of their shift and don their protective equipment by their scheduled start time.

Additionally, Plaintiff and the aggrieved employees were required to clock in at the time clock near the assigned work area. Plaintiff and the aggrieved employees s were required to walk as much as ten to fifteen minutes from the entrance of the premises to arrive at their workstation and clock in, time which was not paid for by defendants. Although there was a timeclock near the entrance of the premises, Plaintiff and the aggrieved employees would be reprimanded, up to and including termination, if they used the clock near the entrance.

Accordingly, Plaintiff and the aggrieved employees were not compensated for the time required to don their protective equipment and walk to their workstation prior to commencing their scheduled shift. This time was not properly recorded as time worked and resulted in Plaintiff and the aggrieved employees not being paid for all hours worked by Defendants.

Similarly, Plaintiff and the aggrieved employees were allowed to clock out prior to the end of their shift. Plaintiff and the aggrieved employees were continued to be paid until the end of their scheduled shift. Plaintiff and the aggrieved employees were allowed to clock out five minutes prior to the end of their shift so that plaintiff and the aggrieved employees could remove and store their protective equipment.

After clocking out, Plaintiff and the aggrieved employees would walk as much as ten to fifteen minutes to arrive at the locker room. Thereafter, Plaintiff and the aggrieved employees would remove their protective equipment and store it in the locker. This process would take an additional five to ten minutes.

Finally, Plaintiff and the aggrieved employees were then required to go through a bag check before exiting the premises. Plaintiff and the aggrieved employees were required to wait in line while a security guard searched their bags and or their person for company property. This process could take as long as five minutes.

The time spent by Plaintiff and the aggrieved employees walking to the locker room, removing and storing their protective equipment, and going through a bag check could total up to thirty minutes—time which was unpaid by Defendants.

Donning and Doffing

At all relevant times during the applicable limitations period, JORGE RIVERA and the aggrieved employees were required to don and doff their work uniforms before clocking in for each shift and/or after clocking out at the end of each shift. The uniform consisted of a protective suit along with boots that would require the assistance of a co-worker to help him put on. Usually this is not a problem as employees would start their shifts at the same time and would be donning or doffing their work uniforms at that time. It generally took JORGE RIVERA approximately 10 minutes to completely put on or take off his work uniform. The time spent donning or doffing their work uniforms was considered to be on the employee's personal time for which JORGE RIVERA and the aggrieved employees were not paid. As a result, Defendants failed to pay JORGE RIVERA and the aggrieved employees for the time spent donning and doffing their work uniforms.

Accordingly, JORGE RIVERA now seeks civil penalties for these Labor Code violations that Defendants have committed against him and aggrieved employees as follows:

(1) For all initial violation of Labor Code section 204, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 210);

(2) For all subsequent violation of Labor Code section 204, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 210);

(3) For all initial violations of Labor Code section 223, that are deemed to be neither willful nor intentional, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 225.5);

(4) For all initial violation of Labor Code section 223 that are deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(5) For all subsequent violations of Labor Code section 223, regardless of whether he initial violation of Labor Code section 223 is deemed to be either willful or intentional, $200 for each aggrieved employee, plus 25% of the amount unlawfully withheld from each aggrieved employee, per pay period for each violation (penalties set by Labor Code section 225.5);

(6) For all initial violations of Labor Code section 510, $50 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 558(a)(1));

(7) For all subsequent violations of Labor Code section 510, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 558(a)(2));

(8) For all initial violations of Labor Code sections 1194 and 1198, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(9) For all subsequent violations of Labor Code sections 1194 and 1198, $200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(10) For all initial violations of Labor Code section 1197 deemed to be intentional, $100 for each aggrieved employee per pay period for each violation (penalties set

by Labor Code section 1197.1(a)(1));

(11) For all subsequent violations of Labor Code section 1197, regardless of whether the initial violation is deemed to be intentional, $250 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 1197.1(a)(2)).

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS (Lab. Code § 226)

Labor Code section 226(a) states, in pertinent part:

> (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

At all relevant times during the applicable limitations period, Defendants failed to provide accurate itemized wage statements that shows:

(1) gross wages earned;

(2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

(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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer;

(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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

By failing to accurately record all hours worked, including "off-the-clock" work described above, by failing to pay employees meal and rest period premiums in accordance with California law, by subjecting vested vacation pay to unlawful forfeiture, and by failing to reimburse employees for all necessary business expenses, Defendants have failed to provide JORGE RIVERA and the aggrieved employees with written wage statements that comply with the requirements of Labor Code section 226(a). The wage statements of JORGE RIVERA and the aggrieved employees have not accurately reflected their applicable rates of pay, hours worked, and the amounts of their gross and net wages.

Accordingly, JORGE RIVERA now seeks civil penalties for Defendants' violations of the Labor Code as follows:

(1) For all violations of Labor Code section 226(a) if a civil action filed in accordance with the procedures set forth in Labor Code section 2699.3 results in an initial citation or its equivalent, $250 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 226.3);

(2) For all violations of Labor Code section 226(a) if a civil action filed in accordance

with the procedures set forth in Labor Code section 2699.3 results in a subsequent citation or its equivalent, $1000 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 226.3).

LATE OR PARTIAL PAYMENT OF FINALWAGES FOLLOWING SEPARATION (Lab. Code §§ 201, 202 and 203)

Labor Code section 201 requires an employer to pay all earned and unpaid wages to a discharged employee immediately at the time of discharge.

Labor Code section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after giving at least seventy-two hours' notice at the time of quitting.

Labor Code section 202 requires an employer to pay all earned and unpaid wages to an employee who quits after giving less than seventy-two hours noticed within seventy-two hours of giving notice of quitting.

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first became due at the same rate until paid for up to thirty days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code sections 201 or 202.

By failing to timely furnish JORGE RIVERA and the aggrieved employees with any final paycheck and/or with final paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or premium wages, Defendants have violated Labor Code sections 201 and/or 202.

Accordingly, JORGE RIVERA now seeks civil penalties for Defendants' violations of the Labor Code as follows:

(1) For all initial violations of Labor Code sections 201, 202 and 203, $100 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2));

(2) For all subsequent violations of Labor Code sections 201, 202 and 203, $200 for each aggrieved employee per pay period for each violation (penalties set by Labor Code section 2699(f)(2)).

VIOLATIONS OF LABOR CODE SECTION 256

JORGE RIVERA is an individual who was employed by Defendants in a non-exempt, hourly position within the past year. At all relevant times, Defendants employed persons, conducted business in, and engaged in illegal labor and payroll practices and policies in California.

Pursuant to Labor Code section 256, the Labor Commissioner shall impose a civil penalty in an amount not exceeding thirty days' pay as waiting time under the terms of Section 203. Defendants willfully failed to timely furnish JORGE RIVERA and aggrieved employees with any final paycheck timely and/or with final paychecks that include all earned and unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation, and/or premium wages.

Accordingly, JORGE RIVERA now seeks to recover the wages and penalties provided in Labor Code section 256 on behalf of himself and the aggrieved employees.

VIOLATIONS OF LABOR CODE SECTION 1199

Labor Code section 1199 states:

> Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars ($100) or by imprisonment for not less than 30 days, or by both, who does any of the following:
>
> (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
>
> (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
>
> (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

By failing to timely furnish JORGE RIVERA and aggrieved employees with unpaid wages, including, but not limited to, all earned and unpaid hourly, overtime, vacation and/or premium wages at the regular rate of pay, Defendants criminal conduct has violated Labor Code section 1199.

Accordingly, for all violations of Labor Code section 1199, Defendants are liable for a misdemeanor and are punishable by a fine of $100 or by imprisonment for not less than thirty days or by both.

CONCLUSION

As noted above, this letter constitutes the required notice under the Private Attorneys General Act of 2004 (Lab. Code §§ 2698 *et seq.*). Insofar as this letter is directed to Defendants, please be advised that JORGE RIVERA will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the Labor and Workforce Development Agency decline to pursue this matter.

Very truly yours,

SETAREH LAW GROUP

Shaun Setareh, Esq.