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VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/308)

Subject: *Lionel Luna v. Alsco - Geyer Irrigation, Inc.*

Dear PAGA Administrator:

This office represents Lionel Luna in connection with his claims under the California Labor Code. Mr. Luna was an employee of ALSCO - GEYER IRRIGATION, INC. ("AGI").

The employer may be contacted directly at the addresses below:

ALSCO - GEYER IRRIGATION, INC. 700 5TH STREET ARBUCKLE, CA 95912	ALSCO - GEYER IRRIGATION, INC. P O BOX 111 ARBUCKLE, CA 95912

Mr. Luna intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Luna seeks relief on behalf of himself, the State of California, and other persons who are or were employed by AGI in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

AGI employed Mr. Luna as a non-exempt employee from approximately May 2015 to September 2023. Mr. Luna worked for AGI as a Service Tech, Pump Truck Supervisor, and Electrical Supervisor. During his employment, Mr. Luna typically worked ten (10) hours or more per day and six (6) days per week. By the end of his employment, Mr. Luna was compensated approximately $30.00 per hour. Mr. Luna's job duties included, without limitation, attending to submersible irrigation pump service and repair requests, troubleshooting issues with clients, and monitoring the submersible irrigation pump installation work.

AGI has committed each of the following Labor Code violations against Mr. Luna, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1):[1]

AGI's Company-Wide and Uniform Payroll and HR Practices

ALSCO - GEYER IRRIGATION, INC is a California corporation. AGI is an irrigation sales and service company based out of Arbuckle, California which serves communities and agricultural operations throughout central and northern California. Upon information and belief, AGI maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Arbuckle, California, for all non-exempt, hourly paid employees working for AGI in California, including Mr. Luna and other aggrieved employees. At all relevant times, AGI issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Luna and other aggrieved employees, regardless of their location or position.

Upon information and belief, AGI maintains a centralized Payroll department at its corporate headquarters in Arbuckle, California, which processes payroll for all non-exempt, hourly paid employees working for AGI in California, including Mr. Luna and other aggrieved employees. Further, AGI issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Luna and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, AGI utilized the same methods and formulas when calculating wages due to Mr. Luna and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

AGI willfully failed to pay all overtime wages owed to Mr. Luna and other aggrieved employees. During the relevant time period, Mr. Luna and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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[1] These facts, theories, and claims are based on Mr. Luna's experience and counsel's review of those records currently available relating to Mr. Luna's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Luna reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, on information and belief, AGI had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. AGI's rounding policy resulted in the failure to compensate Mr. Luna and other aggrieved employees fully for all hours worked, causing Mr. Luna and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. AGI's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Luna and other aggrieved employees. To the extent AGI's rounding policy has taken away time worked that was eligible for overtime, Mr. Luna and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, on information and belief, because AGI's timekeeping system was integrated with the company's system for billing labor hours to customers, Mr. Luna and other aggrieved employees were often unable to record hours they worked. For instance, Mr. Luna was sometimes unable to record his hours worked on AGI's timekeeping system, because AGI's payroll administrators had failed to create the necessary customer billing entry in a timely manner. When Mr. Luna attempted to report missing hours caused by this delay, AGI's payroll administrator would inform him it was too late to record those hours, as the labor hours had already been billed to the customer. Consequently, Mr. Luna and other aggrieved employees received no compensation for this time.

Third, AGI had, and continues to have, a company-wide policy and/or practice requiring Mr. Luna and other aggrieved employees to perform various work-related tasks while off-the-clock outside of their shifts. For example, approximately once per month, Mr. Luna was required to spend about one (1) hour performing work-related administrative tasks, such as creating materials lists and preparing estimates, while at home after his shifts, but was not compensated for this this time spent working. Moreover, Mr. Luna and other aggrieved employees were required to respond to phone communications from potential customers, customers, and AGI's management before and after their shifts or on their days off. For instance, approximately three (3) times per week, Mr. Luna was required to answer work-related phone calls from customers, while off-the-clock, to coordinate service appointments, discuss product information, or troubleshoot issues, which could take up to 30 minutes. Thus, AGI failed to track the time Mr. Luna and other aggrieved employees spent working outside of their shifts, and Mr. Luna and other aggrieved employees received no compensation for this time.

Fourth, AGI had, and continues to have, company-wide policies and/or practices of understaffing jobsites while assigning heavy workloads. AGI's policies and/or practices resulted in a failure to provide Mr. Luna and other aggrieved employees with adequate meal period coverage, and thus, Mr. Luna and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. AGI also had a practice of failing to schedule meal periods, which further caused Mr. Luna and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, approximately three (3) times per week, Mr. Luna worked through his meal periods to keep up with the demands of work and complete his assigned duties, often eating meals while driving between customer jobsites. As another example, Mr. Luna's meal periods would be interrupted by customers, potential customers, and AGI's management calling him on his company-owned cellular phone to discuss work-related matters. Thus, Mr. Luna and other aggrieved employees worked through meal periods and/or had meal periods cut short or interrupted in order to handle their workloads. AGI did not compensate Mr. Luna and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

Fifth, because AGI frowned upon employees accruing meal period penalties, AGI's management pressured Mr. Luna and other aggrieved employees to record compliant meal periods on their timesheets, upon threat of discipline, even when they had not received compliant meal periods. Thus, AGI did not record all hours worked during meal periods, and Mr. Luna and other aggrieved employees performed work during meal periods for which they were not paid.

AGI knew or should have known that as a result of these company-wide practices and/or policies, Mr. Luna and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Luna and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Luna and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, AGI did not pay Mr. Luna and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, AGI paid Mr. Luna and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, AGI failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Luna and other aggrieved employees worked overtime and received these other forms of pay, AGI failed to pay all overtime wages by paying a lower overtime rate than required.

For example, AGI paid Mr. Luna and other aggrieved employees nondiscretionary bonuses, which were listed on Mr. Luna's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Luna and other aggrieved employees were paid overtime wages, AGI did not incorporate the incentive pay and/or nondiscretionary bonuses into Mr. Luna's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, AGI paid Mr. Luna and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. AGI's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Luna and other aggrieved employees on a company-wide basis.

AGI's failure to pay Mr. Luna and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "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." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as stated above, AGI had a company-wide policy and/or practice of rounding Mr. Luna's and other aggrieved employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour, resulting in the failure to compensate Mr. Luna and other aggrieved employees fully for all hours worked. Additionally, on information and belief, because AGI's timekeeping system was integrated with the company's system for billing labor hours to customers, and AGI failed to timely create the customer billing entries, Mr. Luna and other aggrieved employees would often be unable to record hours they worked.

As also stated, AGI had a company-wide policy and/or practice requiring Mr. Luna and other aggrieved employees to perform work-related tasks while off-the-clock outside of their shifts, such as performing administrative tasks or responding to phone communications from customers and AGI's management. AGI failed to track this time that Mr. Luna and other aggrieved employees spent working off-the-clock, and Mr. Luna and other aggrieved employees received no compensation for this time.

Further, as also stated, due to AGI's policies and/or practices of understaffing jobsites while assigning heavy workloads, and failing to schedule meal periods, Mr. Luna and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as also stated, in order to prevent employees from accruing meal period penalties, AGI's management pressured Mr. Luna and other aggrieved employees to record compliant meal periods when meal periods were missed, short, and/or interrupted. Thus, AGI systematically failed to pay Mr. Luna and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, AGI did not pay minimum wages for all hours worked by Mr. Luna and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, AGI did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, AGI regularly failed to pay at least minimum wages to Mr. Luna and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

<u>Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods</u>

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC

Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, AGI had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Luna and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, AGI had a company-wide practice and/or policy of failing to schedule meal periods, which further caused Mr. Luna and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Mr. Luna and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Mr. Luna worked through his meal periods about three (3) times per week to keep up with the demands of work and complete his assigned duties, and often was forced to eat meals while driving between customer jobsites. As also stated, Mr. Luna's meal periods would be interrupted by customers, potential customers, and AGI's management calling him on his company-owned cellular phone to discuss work-related tasks. Additionally, Mr. Luna took his meal periods late, after the fifth hour of work, due to the lack of coverage.

Also, as stated, on information and belief, because AGI frowned upon employees accruing meal period penalties, AGI's management pressured Mr. Luna and other aggrieved employees to record complaint meal periods, regardless of whether they received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by AGI.

Additionally, Mr. Luna and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during his employment, Mr. Luna sometimes worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Mr. Luna and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, AGI knew or should have known that as a result of its policies, Mr. Luna and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. AGI further knew or should have known that it did not pay Mr. Luna and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, to the extent that AGI's rounding policy reported that Mr. Luna and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Mr. Luna and other aggrieved employees did not receive meal period premiums for these improperly rounded meal periods.

Furthermore, AGI engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Luna and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that AGI did pay Mr. Luna and other aggrieved employees premium pay for missed, late, and interrupted meal periods, AGI did not pay Mr. Luna and other aggrieved employees at the correct rate of pay for premiums because AGI systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, AGI failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, AGI regularly failed to authorize and permit Mr. Luna and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, AGI's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Luna and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, AGI failed to schedule rest periods, which, coupled with AGI's failure to provide adequate rest period coverage, further led to Mr. Luna and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, AGI maintained and implemented a company-wide on-premises rest period policy, which effectively required that Mr. Luna and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Luna and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, AGI effectively maintained control over Mr. Luna and other aggrieved employees during rest periods.

As a result of AGI's practices and policies, Mr. Luna and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Luna had to forgo all his rest periods due to the lack of coverage and AGI's failure to schedule rest periods for employees.

AGI has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Luna and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that AGI did pay Mr. Luna and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, AGI did not pay Mr. Luna and other aggrieved employees at the correct rate of pay for premiums because AGI failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, AGI failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

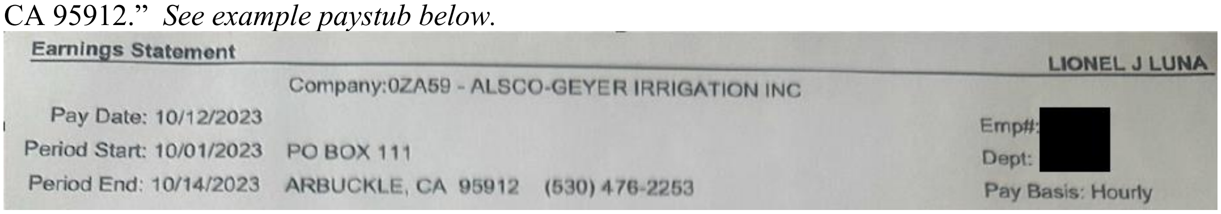
California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. AGI has not provided Mr. Luna and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not to exceed $4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of $250 per employee per violation in an initial citation and $1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, AGI has knowingly and intentionally provided Mr. Luna and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AGI issued uniform wage statements to Mr. Luna and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, AGI violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

Because AGI did not accurately record the time Mr. Luna and other aggrieved employees spent working off-the-clock, improperly rounded their Mr. Luna's and other aggrieved employees' total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), AGI did not list the correct amount of gross wages and net wages earned by Mr. Luna and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, AGI failed to accurately list the total number of the hours worked by Mr. Luna and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because AGI did not calculate Mr. Luna and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, AGI did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). AGI also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

Further, and separate from these violations, AGI issued uniform wage statements to Mr. Luna and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Luna's and other aggrieved employees' wage statements incorrectly list the employer's address as "PO BOX 111 ARBUCKLE, CA 95912" but, according to the California Secretary of State's website, the correct address is "700 5TH STREET ARBUCKLE, CA 95912." *See example paystub below.*


Earnings Statement
LIONEL J LUNA
Company:0ZA59 - ALSCO-GEYER IRRIGATION INC
Pay Date: 10/12/2023
Period Start: 10/01/2023 PO BOX 111
Period End: 10/14/2023 ARBUCKLE, CA 95912 (530) 476-2253
Emp#: [redacted]
Dept: [redacted]
Pay Basis: Hourly

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments . . . ." Labor Code section 1174.5 provides that employers are subject to a $500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), AGI willfully failed to maintain accurate payroll records for Mr. Luna and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Mr. Luna's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, AGI engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Luna and other aggrieved employees, in violation of section 1198. Furthermore, in light of AGI's failure to provide Mr. Luna and other aggrieved employees with second 30-minute meal periods to which they were entitled, AGI kept no records of meal start and end times for second meal periods.

Because AGI failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Luna and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Luna and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, AGI failed to pay Mr. Luna and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

On information and belief, AGI has a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Luna voluntarily resigned from his employment with AGI on or about September 21, 2023. However, on information and belief, AGI did not provide Mr. Luna with his final wages until October 13, 2023, or later. Thus, AGI failed to pay Mr. Luna his final wages within seventy-two (72) hours of his leaving AGI's employ, in violation of California Labor Code section 202.

Additionally, AGI willfully failed to pay Mr. Luna and other aggrieved employees who are no longer employed by AGI the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, vested vacation wages, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving AGI's employ.

Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, AGI had a company-wide policy and practice of failing to pay Mr. Luna and other aggrieved employees vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. For example, on information and belief, Mr. Luna had earned vested vacation pay until his employment with AGI ended on or about September 21, 2023. However, AGI only paid Mr. Luna the balance of his accrued and unused vacation wages as of September 16, 2023, or at the end of his prior pay period. AGI willfully and improperly paid Mr. Luna and other aggrieved employees their unused and vested vacation wages through their second to last pay period worked.

AGI's failure to pay Mr. Luna and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, on information and belief, AGI did not pay Mr. Luna and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, AGI paid Mr. Luna and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, AGI failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Luna and other aggrieved employees took sick leave and received these other forms of pay, AGI failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, AGI paid Mr. Luna and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

AGI's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Luna and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

AGI failed to provide Mr. Luna and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). AGI's failure to provide Mr. Luna and other aggrieved employees with written notice of basic information regarding their employment with AGI is in violation of Labor Code section 2810.5.

Mr. Luna and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid . . . . (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid . . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." AGI, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Luna's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Luna seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Luna, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against AGI for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Luna seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Alexander Lima
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

Alexander Lima

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