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VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Gunderson Rail Services, LLC
dba Greenbrier Rail Services
Attn: Legal Department
1 Centerpointe Drive, Ste. 200
Lake Oswego, OR 97035

Gunderson Rail Services, LLC
dba Greenbrier Rail Services
Attn: Human Resources
1475 Cooley Court
San Bernardino, CA 92407

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR
CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Gunderson Rail Services,
LLC dba Greenbrier Rail Services

From: Harold Wesley, on behalf of himself and all other current and former hourly nonexempt
employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employee Harold Wesley ("Mr. Wesley") to seek compensation and all other available relief, including civil penalties on his behalf and on the behalf of all those similarly aggrieved (collectively with Mr. Wesley, "Claimants") who have been injured by Gunderson Rail Services, LLC dba Greenbrier Rail Services ("Gunderson Rail") violations of the California Labor Code. Mr. Wesley, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt employees of Gunderson Rail, intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

Factual Statement:

Gunderson Rail offers railroad related services in California, including maintenance and repair services of rail cars.

Claimant Mr. Wesley worked for Gunderson Rail from approximately September 13, 2021 to July 26, 2023 as an hourly, nonexempt employee in the positions of Machine Operator C and Machine Operator B, earning \$23.96 per hour at the time of his separation. Mr. Wesley, on behalf of himself and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in maintaining and repairing rail cars, including repairing their axels. As part of their employment with Gunderson Rail, Claimant and other hourly, nonexempt employees, collectively, “hourly nonexempt employees,” are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, donning and doffing safety and personal protective equipment; attending morning meetings; pulling mounts off of axels of rail cars; repairing railcar axels; maintaining railcars; and operating a crane to hook up and move axels, clean and grind the axels and clarify the axels.

Claimant Mr. Wesley regularly worked six (6) days per week for 8 hours or more hours per day. During the entire course of his employment, Gunderson Rail failed to provide Mr. Wesley and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Gunderson Rail has also failed to pay minimum wages to Mr. Wesley and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 9-2001. As a consequence, Gunderson Rail has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to, IWC Wage Order No. 9-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Gunderson Rail has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Gunderson Rail has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Gunderson Rail has failed and continues to fail to provide timely, accurate wage statements to Mr. Wesley and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Gunderson Rail, Gunderson Rail violated Labor Code section 203 by failing to pay all wages due upon separation. Gunderson Rail has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs for cell phone data and uniforms, in violation of Labor Code section 2802. Mr. Wesley is informed and believes that such violations are ongoing, systematic, and continuous. Mr. Wesley intends to bring an action against Gunderson Rail under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

¹ Without limitation, Mr. Wesley, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296,

Theories of Labor Code Violations and Remedies:

Claimant Mr. Wesley was employed by Gunderson Rail from approximately September 13, 2021 to July 26, 2023 first as a Machine Operator B and then as a Machine Operator C. The position of Machine Operator entails performing maintenance on rail cars and repairing the axels of rail cars. For a period of at least four (4) years prior to July 2024, but for our purposes here, one (1) year prior, Gunderson Rail has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Gunderson Rail has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and section 4 of IWC Wage Order No. 9-2001. First, Defendant Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred because Claimants were required to return early from lunch while not clocking back in until 30 minutes had elapsed but also before and after their scheduled shifts. Accordingly, Claimants were not paid for that time spent working off the clock. That is, Defendant implemented policies and enforced practices requiring Claimants to perform work during their meal periods (while clocked out) and rest breaks, the effects of which Defendant could have mitigated by adjusting expectations and/or by adding more staff to reduce the expected daily workload. However, Defendant instead chose to instruct Claimants to work during their meal periods on particularly demanding days and to skip rest breaks. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Gunderson Rail's part to provide compliant meal periods and rest breaks. With that, Gunderson Rail's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Gunderson Rail's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Gunderson Rail's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 9-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Gunderson Rail failed to authorize and permit timely, full-length meal periods for Mr. Wesley and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 9-2001. Mr. Wesley and all similarly aggrieved persons were required to perform work during their meal periods in the form of continuing to perform their assigned services that cut into their 30-minute meal periods, necessitating that they returned from their meal period early before 30 minutes had elapsed. Mr. Wesley and Claimants also began their meal periods after the end of the fifth hour. Despite that, Gunderson Rail did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Gunderson Rail required Mr. Wesley and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 9-2001, and 2699(f).

1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Gunderson Rail likewise failed to authorize and permit Mr. Wesley and all other similarly aggrieved employees to take any full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 9-2001. Claimants were not able to take their requisite number of 10-minutes rest breaks based on their shift duration; Claimants regularly worked through their rest breaks. Gunderson Rail did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 9-2001. Furthermore, since Gunderson Rail required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Gunderson Rail was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Mr. Wesley and Claimants regularly worked overtime hours, and they also earned performance-based bonuses. Gunderson Rail has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. Gunderson Rail has also failed to compensate at the correct overtime rate during pay periods when Mr. Wesley and Claimants earned performance-based bonuses. In short, during the entire course of their employment, Gunderson Rail failed to provide Mr. Wesley and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 9-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Gunderson Rail, including Mr. Wesley, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Mr. Wesley, did not receive all wages owed upon separation based on Gunderson Rail’s prior failings to pay all wages owed every pay period, including but not limited to meal and rest premiums and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Gunderson Rail pursuant to Labor Code section 226. Because Gunderson Rail failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants’ wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants’ wage statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Gunderson Rail for all necessary, **business-related expenses** they incurred in executing their duties for Gunderson Rail. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Gunderson Rail, however, has failed to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs incurred for the use of their personal cell phone required during their shifts for communication purposes as well as for uniforms that Gunderson Rail required Claimants to wear daily.

Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Gunderson Rail's uniform failure to pay overtime and minimum wages, failure to authorize and permit full-length, off-duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, 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), 2699.3(c), and 2699.5, Mr. Wesley, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Gunderson Rail for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner